

HA48TUC1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

16 Cr. 91 (PKC)

5 SCOTT TUCKER and  
6 TIMOTHY MUIR,

Trial

7 Defendants.

-----x

8 New York, N.Y.  
9 October 4, 2017  
10:10 a.m.

10 Before:

11 HON. P. KEVIN CASTEL

12 District Judge  
13 and a jury

14 APPEARANCES

14 JOON H. KIM  
15 Acting United States Attorney for the  
16 Southern District of New York  
17 BY: NIKETH V. VELAMOOR  
18 HAGAN C. SCOTTEN  
19 SAGAR K. RAVI  
20 Assistant United States Attorneys

18 FREEMAN NOOTER & GINSBERG  
19 Attorneys for Defendant Tucker

20 BY: LEE A. GINSBERG  
21 NADJIA LIMANI

-and-

21 STAMPUR & ROTH

22 BY: JAMES M. ROTH

23 BATH & EDMONDS, P.A.  
24 Attorneys for Defendant Muir

25 BY: THOMAS J. BATH

-and-

BEVERLY VAN NESS

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Cohen - Cross

1 (Trial resumed; jury present)

2 CLIFFORD COHEN, resumed.

3 THE COURT: Congratulations to all of you Yankee fans.  
4 The dream continues. As I said a couple of weeks ago, I am a  
5 Met fan, but I have really gotten over that. I remember when  
6 the Mets and the Red Sox were in the '86 World Series and I had  
7 a friend who was a Yankee fan and he actually rooted for the  
8 Red Sox, and I have never forgiven him for that. So I am going  
9 to be rooting for the Yankees all the way through. So let's  
10 see what happens now. Keep it going.

11 Mr. Cohen, I remind you that you are still under oath.

12 THE WITNESS: Yes, sir.

13 THE COURT: You may, continue.

14 CROSS EXAMINATION (Cont'd)

15 BY MR. SCOTTEN:

16 Q. Good morning, Mr. Cohen.

17 A. Good morning, Mr. Scotten.

18 Q. I think when we left off yesterday, we had talked about the  
19 Bachman letter. And after that point you began drafting some  
20 agreements and doing some work for Mr. Tucker, is that right?

21 A. Yes, sir.

22 Q. And then in very early 2004, you were contacted by the  
23 Kansas State Bank Commission, correct?

24 A. That's correct.

25 Q. And the particular person there was a staff attorney named

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1 Danny Vopat?

2 A. Yes.

3 Q. There was some initial correspondence with that office in  
4 which you copied Scott Tucker, correct?

5 A. Yes.

6 Q. And Scott Tucker became angry with you because of that,  
7 right?

8 A. Scott responded after getting his copy of my letter to  
9 Vopat, which showed on the bottom that I had copied Scott  
10 Tucker, and he reminded me that I was not to put his name on  
11 letters related to his corporate business, and so I told him I  
12 would be careful and not do that again.

13 Q. And you were sufficiently upset that you lost a night's  
14 sleep over it, correct?

15 A. Well, it did bother me because he seemed disappointed that  
16 I had made that mistake and I try to follow client's  
17 instructions. So yes, it did upset me a little bit.

18 MR. SCOTTEN: Can we show Government Exhibit 4073 to  
19 the witness.

20 Q. Do you recognize this?

21 A. I do recognize it, yes.

22 Q. This is an e-mail from Scott Tucker to you and then your  
23 response, correct?

24 A. Yes.

25 MR. SCOTTEN: Government offers 4073.

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1 THE COURT: Any objection?

2 MR. ROTH: No, Judge.

3 THE COURT: Received.

4 (Government's Exhibit 4073 received in evidence)

5 BY MR. SCOTTEN:

6 Q. So if we start at the bottom --

7 MR. SCOTTEN: Ms. Grant, can we zoom in on the body of  
8 the text that Mr. Tucker sent?

9 Q. So when you refer in the top line to being copied on the  
10 Vopat letter, that's just a letter you sent Danny Vopat at the  
11 Kansas Banking Commission, right?

12 A. Yes.

13 Q. And Tucker tells you it wasn't illogical for you to do that  
14 because he was in fact a registered president of National Money  
15 Service at a relevant time?

16 A. Well, he was.

17 Are you asking me why I copied him on the letter?

18 Q. No. My questions will be very simple. It's simply because  
19 it says company here, that's National Money Service, that's the  
20 company right?

21 A. That's true.

22 Q. Then in the second sentence Tucker instructs you not to  
23 even blind copy him, that he should be either secretly or  
24 openly copied on any correspondence you send relevant to his  
25 company. He just wants to know what you sent separately after

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1 the fact, correct?

2 A. I think you're correct.

3 Q. Then in the third sentence he explains that he has already  
4 installed a nominee president, someone else to formally show up  
5 in his name, correct, for MN Services?

6 A. Yes, sir.

7 Q. Then the fourth paragraph, he is talking about a Web site  
8 called webfastcash.com. That's one of his lending Web site  
9 names, correct?

10 A. Yes.

11 Q. And he is informing you that he changed the listed  
12 registrant so that it shows that it's registered to Inajin  
13 Enterprises, right?

14 A. Yes.

15 Q. Inajin Enterprises is another one of these tribal entities  
16 that had been formed in the course of this venture, right?

17 A. That's the best of my recollection.

18 Q. You weren't involved in forming that one?

19 A. I was not.

20 Q. But you were involved in responding to this. So your  
21 understanding from Tucker was that it was one of those type of  
22 corporations?

23 A. Yes.

24 Q. Here he just states that he, Scott Tucker, owned the name  
25 of the Web site, but he is making it essentially appear to

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1 those looking from the outside that it connects to Inajin  
2 Enterprises, is that right?

3 A. Well, webfastcash.com is a trade name, not an actual  
4 company name, and so he's, in my opinion, changing the trade  
5 name from webfastcash.com to Inajin Enterprises.

6 Q. Sir, the letter here says he changed the registrant. He  
7 didn't change the name, right?

8 If you look at the third sentence -- go ahead. Do you  
9 have an answer?

10 A. Mr. Tucker had a number of --

11 Q. Sir, I am just asking you what the letter says from Mr.  
12 Tucker.

13 A. OK. The letter says, "I changed the registrant of  
14 webfastcash.com on the Internet." That means, to me, not with  
15 the Secretary of State of Nevada but a domain registration on  
16 the Internet.

17 Q. I think, if I am understanding you correctly, he is not  
18 changing actual ownership -- he says even though I own the  
19 name -- he is changing the Internet registration, which is what  
20 you see if you look for it through the Internet, correct?

21 A. I think you're correct.

22 Q. If you can just go up to your response.

23 So here you in fact literally said you hardly slept  
24 the night before, correct?

25 A. Yes. That's a true statement.

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1 Q. And you assure him in the future you would double and  
2 triple check everything in responding to his complaints about  
3 secrecy, correct?

4 A. I meant by this statement that we would not reveal his name  
5 because his instruction was not to.

6 MR. SCOTTEN: We can take that down.

7 Q. As you handled this response to the Kansas State Banking  
8 Commission, you drafted a letter to respond to that commission,  
9 correct?

10 A. Yes, sir.

11 Q. In the course of drafting that you looked at the Bachman  
12 letter and did some of your own research?

13 A. Yes.

14 Q. And in addition to drafting a letter to the Kansas State  
15 Banking Commission, you also wrote a letter to Scott Tucker,  
16 right?

17 A. Yes.

18 Q. This letter brought concerns of yours to Mr. Tucker's  
19 attention, correct?

20 A. My letter to Tucker of March 25, 2004 did explain my  
21 concerns about how to operate the relationship with the tribal  
22 enterprise.

23 MR. SCOTTEN: Let's show the witness Defense Exhibit  
24 159.

25 Q. I think you will recognize it.

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1 MR. SCOTTEN: Can we scroll down so we see all the  
2 pages.

3 Q. Is this the letter you sent to Scott Tucker as well as an  
4 attached draft letter you were proposing to send to the Kansas  
5 State Banking Commission?

6 A. Yes.

7 MR. SCOTTEN: Government offers Defendants' Exhibit  
8 159.

9 MR. ROTH: No objection.

10 THE COURT: Received.

11 (Defendants' Exhibit 159 received in evidence)

12 MR. SCOTTEN: This does contain some legal content, if  
13 you want to give that instruction.

14 MR. ROTH: I don't think it's necessary.

15 MR. SCOTTEN: It's the same instruction you gave with  
16 the Bachman letter. There is case law in there. I didn't know  
17 if the Court wanted to instruct the jury that it's just for the  
18 effect on the defendant and it's not for the truth of the law  
19 in there.

20 THE COURT: I think the jury understands the  
21 statements of law in there, in fact, any factual statements  
22 made in there are not for the truth of the statements, but that  
23 they were made, because the fact that they were made may be  
24 significant in this case. It may tell you something about  
25 somebody's motives or actions, and that's something that you,

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1 ladies and gentlemen, decide as the triers of fact. But you  
2 don't consider the truth of the statements in it. It's the  
3 fact that they were said.

4 MR. SCOTTEN: Thank you, your Honor.

5 BY MR. SCOTTEN:

6 Q. So starting on the first page, this is a letter to Scott  
7 Tucker, as you can see at the top?

8 A. This is my letter to Mr. Tucker, March 25, 2004.

9 MR. SCOTTEN: If we can just blow up the second  
10 paragraph.

11 Q. I am going to highlight a few portions.

12 Beginning in the first sentence, you are communicating  
13 to him you need to reemphasize problems or weaknesses in the  
14 argument you're planning to make to the Kansas State Banking  
15 Commission, correct?

16 A. Yes.

17 Q. By reemphasize, I gather you informed Mr. Tucker of these  
18 concerns before in some fashion?

19 A. Yes. We had had earlier discussions about the enterprise  
20 and wanting it to be successful.

21 Q. Going down to the last two paragraphs -- sorry, last two  
22 sentences, is it fair to say you state that this is an  
23 important issue for the jurisdictional arguments that you were  
24 planning on making?

25 A. That was my opinion.

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1 Q. When you were explaining this idea of a jurisdictional  
2 argument to Mr. Tucker, a jurisdictional argument being  
3 something that keeps you out of court, correct?

4 A. Yes. It had to do with whether the State of Kansas,  
5 through the bank commissioner, had the legal ability to  
6 regulate or restrict activities of a tribal enterprise and its  
7 nontribal agent.

8 Q. The idea behind jurisdiction is, even if you're doing  
9 something intentional or in violation of the law, there is no  
10 power to bring you into court because the court lacks  
11 jurisdiction, lacks the authority to bring you in, correct?

12 A. Within the context of this letter, it was focused on  
13 convincing the bank commissioner that he did not have the  
14 authority to regulate the activity. I never addressed with the  
15 bank commissioner whether the activity was good, bad, moral,  
16 immoral or anything else.

17 MR. SCOTTEN: Then we can go down to the next  
18 paragraph. If we can just highlight the words in italics.

19 Q. All I want to ask you here, you referred yesterday in your  
20 testimony with the defendants to a case in the Tenth Circuit  
21 from 1987, correct?

22 A. Yes.

23 Q. That was a case that you had told Mr. Tucker was important  
24 to what he was doing, right?

25 A. I did tell him that.

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Cohen - Cross

1 Q. That's this case right here, *Indian Country U.S.A.*?

2 A. That's correct.

3 Q. If we can go forward to the second page, and there is some  
4 legal analysis of that case, correct?

5 A. Yes.

6 Q. I want to start at the third paragraph.

7 MR. SCOTTEN: If we can blow that up.

8 Q. Now you're essentially comparing Indian Country to Mr.  
9 Tucker's conduct, correct?

10 A. Yes.

11 Q. So when you say, NM Service Corp., that's Mr. Tucker's  
12 company?

13 A. NM Service Corp. is Mr. Tucker's company at that time.

14 Q. You explained the facts of Indian Country are not analogous  
15 to the facts in Mr. Tucker's situation, correct?

16 A. Yes. In my opinion, they could be distinguished.

17 Q. And just to be clear, to say they are not analogous is a  
18 way a lawyer would express not the same, they are different in  
19 some meaningful way?

20 A. That's correct.

21 Q. You regarded that as something of a problem, but you also  
22 noted the Bachman letter addressed it to some degree?

23 A. Both of those statements are true.

24 Q. If we can move to the next paragraph.

25 Now, here you talk about what you term a more

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1 disturbing factual difference between Indian Country U.S.A. and  
2 Mr. Tucker's situation, correct?

3 A. Yes.

4 Q. And that disturbing factual difference is in the prior case  
5 the Indian tribe, Native American tribe actually had control  
6 over the business, correct?

7 A. Yes.

8 Q. That's what it says in the second sentence, "actually had  
9 control," correct?

10 A. Yes.

11 MR. ROTH: I will object, your Honor. It says  
12 "compared to the control."

13 I'm sorry. I apologize.

14 THE COURT: Go ahead.

15 Q. Then in the third sentence, you note that it would be much  
16 more difficult for a court to determine that there was an  
17 actual tribal enterprise here, correct?

18 A. Well, it was a central concern of my letter and it was the  
19 reason I outlined five major points on the last page of the  
20 letter.

21 Q. We will come to those points in a second.

22 For now, what you're contrasting is the difficulty in  
23 finding that this was an actual tribal enterprise as opposed to  
24 a conduit set up by the tribe for NM Service Corp., correct?

25 A. Yes.

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1 Q. And conduit, that's the same term used in the Bachman  
2 letter. If it's just a pipeline, the analysis doesn't apply,  
3 correct?

4 A. That was Ms. Bachman's concern and that was my concern.

5 Q. And specifically, at the end of the sentence, you say that  
6 this can't be a situation where the tribe uses NM Service  
7 Corp. -- NM Service Corp. uses the tribe's sovereign immunity  
8 for its own financial gain, correct?

9 A. That's what I wrote, yes.

10 Q. You didn't verbally communicate anything different than  
11 that to Mr. Tucker, did you?

12 A. No.

13 Q. Let's go to the next paragraph.

14 Now, in your first sentence here, you're telling  
15 Tucker that your observations are based on facts that you and  
16 Tucker know but the state bank commissioner does not know,  
17 correct?

18 A. That's what it says, yes.

19 Q. Then you note that what little the state bank commissioner  
20 does know may convince him to stay hands-off without delving  
21 further into the actual facts, is that correct? We will flip  
22 the page, but is that correct so far?

23 A. That's correct so far.

24 Q. Let's flip to the next page.

25 Then you note there is a concern that if the bank

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1 commissioner does investigate further, the facts may not be in  
2 your favor, he may learn the facts are not in your favor,  
3 correct?

4 A. That's the concern I had expressed.

5 Q. Let's skip down to the beginning of the next paragraph.

6 So now you're identifying another case that is much  
7 less favorable to the legal position you want to take, correct?

8 A. Yes.

9 Q. And there's about a page or so of legal analysis of that  
10 case, correct?

11 A. Yes.

12 MR. SCOTTEN: So if we can just go to the fourth page.

13 If you can highlight the first full paragraph.

14 Q. Now, this is the paragraph you mentioned a minute ago where  
15 you lay out five factors for Tucker that were important for him  
16 to follow or adhere to or pay attention to?

17 A. That's true.

18 Q. I want to go through them one at a time.

19 The first is whether the tribe directs NM Service  
20 Corp.'s activities, whether the tribe in fact is giving  
21 direction here, correct?

22 A. Yes.

23 Q. The second is whether the tribe decides what loans are to  
24 be made and what loans are to be rejected, correct?

25 A. Yes.

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1 Q. The third is how involved the tribe is in financing the  
2 activities, right?

3 A. Yes.

4 Q. And to be clear, in the case of each of these you are  
5 telling him if the tribe is directing or if the tribe is making  
6 the loans or is doing the financing, those are the facts that  
7 would be in your favor?

8 A. Yes.

9 Q. And then the fourth line, you note there should be  
10 employment opportunities for the tribe?

11 A. Yes.

12 Q. And then finally, the fifth line you refer to the benefit  
13 received by the tribe in proportion to that received by NM  
14 Service Corp., correct?

15 A. Yes.

16 Q. So that relates to how much of the benefit goes to the  
17 tribe versus how much of it goes to Scott Tucker's company?

18 A. Yes.

19 Q. The more benefit the tribe got as opposed to what Scott  
20 Tucker got, the better for your legal case, right?

21 A. Yes.

22 Q. Again in that last sentence, you refer to this conduit  
23 idea. These factors are important in making the tribal  
24 corporation be not just a conduit used by Scott Tucker's  
25 company, correct?

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1 A. Yes.

2 Q. So let's go to the next paragraph.

3 Here you talk about what could happen if this  
4 investigation and potential litigation continues. At the end  
5 you warn Tucker, just looking at the end of the last sentence,  
6 you warn Tucker there could possibly be a finding that no  
7 tribal business is actually conducting the lending business.  
8 That's the financial business, right?

9 A. I warned him that was a possibility, and my opinion was  
10 based on how well he was able to adhere to the five factors in  
11 a way to benefit the tribe and give the tribe involvement in  
12 the enterprise.

13 Q. Factors such as approving loans, actually directing the  
14 activities, financing the loans, those factors, correct?

15 A. All of the factors I mentioned in the letter, yes.

16 Q. Then I want to go to the next paragraph.

17 Here, you note that you could do more research, but  
18 the best way to avoid the scenario -- and that's the scenario  
19 that there is no actual tribal enterprise -- is to strengthen  
20 the factual argument?

21 A. Yes, sir.

22 Q. So what you're telling him is that it's not a question of  
23 doing more research, it's a question of actually doing the  
24 things you referred to in your letter, correct?

25 A. That's correct.

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1 Q. Now after this -- you sent this to Mr. Tucker -- you also  
2 went ahead and sent a letter to the Kansas State Banking  
3 Commission, correct?

4 A. I did.

5 Q. In there you made arguments to the Kansas State Banking  
6 Commission to not further continue its investigation, correct?

7 A. I did.

8 Q. As a lawyer that's permissible for you because you don't  
9 have to be 100 percent sure your argument is right or  
10 necessarily believe it's right to make it on behalf of your  
11 client, correct?

12 A. Well, the ethics rules say you're not to knowingly make  
13 false statements, but you're allowed to make a good faith  
14 argument for how the facts could be interpreted in your  
15 client's favor, and I was attempting to do that.

16 Q. As part of that, your strategy was to not reveal the  
17 underlying facts to the Kansas State Banking Commission,  
18 correct?

19 A. That was my strategy, yes.

20 Q. Yesterday Mr. Roth asked you about successfully warding off  
21 the Kansas State Banking Commission. You said it had succeeded  
22 in that they didn't follow up, correct?

23 A. Correct.

24 Q. So when you wrote this letter, the Kansas State Banking  
25 Commission never learned the underlying facts as far as you

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1 know?

2 A. I don't think they did. It's an inference I drew from the  
3 fact that we really never heard from them again, and I  
4 concluded they decided to drop the matter.

5 Q. All right. We can take that down.

6 By the way, I wanted to be clear about the timing  
7 here. This letter is after you drafted the servicing agreement  
8 to Kickapoo, correct?

9 A. Yes.

10 Q. In some sense there is a relationship there because you had  
11 learned a little bit more about how Tucker was doing business  
12 in the course of the Kickapoo business, correct?

13 A. I didn't learn about the actual operation within his office  
14 in Overland Park. I learned what terms he was willing to agree  
15 to and what terms the tribe was willing to agree to, and that's  
16 how I was able to draft the agreement, and it was signed  
17 February 23, 2004.

18 Q. In terms of the underlying facts, how the lending operation  
19 actually worked, you never learned those facts?

20 A. I didn't know them then and I don't know them now.

21 Q. There was no explanation of how the loan processing worked  
22 or where things were physically put?

23 A. I was never engaged to work on those details within his  
24 office.

25 Q. You did, however, have a subsequent exchange with Mr.

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1 Tucker about the contents of the letter we just looked at,  
2 correct?

3 A. Yes.

4 Q. In fact, you had an e-mail exchange, at least among other  
5 things, correct?

6 A. Yes.

7 Q. I am going to show you what is marked Defense Exhibit 151.

8 Is this in fact the e-mail exchange I just referred to  
9 between you and Scott Tucker?

10 A. It is.

11 MR. SCOTTEN: Government offers Defendants' Exhibit  
12 151.

13 MR. ROTH: No objection.

14 THE COURT: Received.

15 (Defendants' Exhibit 151 received in evidence)

16 BY MR. SCOTTEN:

17 Q. Let's start at the bottom with Mr. Tucker's e-mail to you.

18 So Mr. Tucker is referring to corporation documents  
19 for the tribal entity and saying those documents look good to  
20 him. The first sentence.

21 A. That's correct.

22 Q. Then he refers to additional documents, resolutions, an  
23 ordinance that Conly wanted, correct?

24 A. Yes.

25 Q. Conly is Conly Schulte, another lawyer who was involved in

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1 this?

2 A. Yes.

3 Q. Moving on to the second sentence after the question mark.

4 Mr. Tucker says, we -- you and he -- need to see them and  
5 determine what else is needed in terms of "making his deals  
6 tight," is that correct?

7 A. Yes.

8 Q. He is referring here to what other documents do we need?

9 A. Yes.

10 Q. Let's go to the top e-mail.

11 MR. SCOTTEN: If we can just highlight the second and  
12 third sentences.

13 Q. So you say to him, "My suggestions are not limited to  
14 creating a bigger file, correct?"

15 A. Correct.

16 Q. That means the file is the legal documents. It's not just  
17 that we need more documents, right?

18 A. Right.

19 Q. "It has more to do with substance than form." You're  
20 saying it's the facts you need here, not the paperwork,  
21 correct?

22 A. Yes, sir.

23 Q. And you go on essentially to explain about those facts, the  
24 theory here doesn't work?

25 A. That was the point of my message, that it's the actual

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1 involvement at some minimal level of tribal members in the loan  
2 business.

3 Q. More specifically, it's those five factors you identified  
4 in your earlier letter, correct? Those are the facts you were  
5 communicating to him?

6 A. This e-mail doesn't refer to those, but my thought process  
7 was that those five factors are important. It's not that we  
8 needed more paperwork. You need your operation to be factually  
9 aligned with the five issues that identified.

10 Q. The date of this e-mail is March 29, 2004, right?

11 A. Yes.

12 Q. That's just a few days after you had sent him the letter?

13 A. Four days, yes.

14 Q. I want to be clear here. There was never a point in which  
15 you advised Mr. Tucker that he could just create the appearance  
16 those factors were being complied with, is there?

17 A. Never.

18 Q. You never told him that he didn't actually need to change  
19 things but he needed his employees to make it seem that those  
20 factors were being adhered to, did you?

21 A. I did not.

22 Q. Eventually in the 2005, 2006 period, Mr. Tucker stopped  
23 using Mr. Cohen to do tribal work?

24 A. Yes.

25 Q. And your understanding was because Mr. Tucker wanted

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1 someone more aggressive in the legal position they would take,  
2 correct?

3 A. I expressed that thought in one of my prior interviews with  
4 you or other U.S. Attorneys.

5 Q. I am not sure you can testify to your prior statements, but  
6 is that your understanding?

7 A. Let me tell you what my opinion is about that.

8 Q. Can I first ask, is that statement true, that you believed  
9 it was because he wanted a more aggressive attorney?

10 A. He wanted a more aggressive attorney on all matters, not  
11 just Indian issues.

12 Q. And he also wanted an attorney who would ask less  
13 questions, correct?

14 A. He never said that to me. I think that I had a concern  
15 that was an issue at the time.

16 Q. He also wanted someone who would be full time dedicated to  
17 his business, correct?

18 A. Yes. His business was expanding. When he relieved me of  
19 duties, I thought it was because he really needed somebody  
20 pretty much full time and I was not available to do that.

21 Q. You learned that Mr. Muir took that position, correct?

22 A. I did learn that.

23 MR. SCOTTEN: One second, your Honor.

24 No further questions.

25 THE COURT: Redirect.

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1 MR. BATH: Judge, somehow the order got reversed  
2 yesterday.

3 MR. SCOTTEN: My thought was, I don't think either  
4 defendant rested. I think they are putting on a joint case,  
5 but maybe I am wrong about that.

6 THE COURT: I think this witness was called by Mr.  
7 Tucker.

8 MR. GINSBERG: That's correct, your Honor.

9 THE COURT: So, Mr. Bath, you're welcome to exam.

10 CROSS-EXAMINATION

11 BY MR. BATH:

12 Q. Mr. Cohen, in the '03, '04, '05 time period, you never  
13 worked with Tim Muir, did you?

14 A. I did not.

15 Q. You came to know Tim later, is that right?

16 A. My recollection is 2006 or later.

17 Q. And did you meet him because you were doing work on behalf  
18 of Scott Tucker or did you meet him on bar activities?

19 A. Initially I didn't meet him face-to-face. We began talking  
20 on the phone primarily about my law firm's role as registered  
21 agent for a variety of Tucker organizations.

22 Q. That was your initial contact?

23 A. Yes, sir.

24 Q. Did you ever have any subsequent legal work that you did  
25 with Tim?

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1 A. I don't recall any.

2 Q. When you were approached by Mr. Tucker in '03, he  
3 essentially asked you to give him an opinion on the tribal  
4 model, is that correct?

5 A. Yes.

6 Q. To give that opinion, you did research?

7 A. Yes.

8 Q. Looked at statutes?

9 A. I looked primarily at federal district court opinions and  
10 United States Court of Appeals opinions.

11 Q. And you spent a lot of time doing that?

12 A. I personally spent maybe a dozen hours. My associate  
13 Robert Massengill spent 40 hours or more, and we had a law  
14 clerk named Burt Harriman who probably spent 40 hours.

15 Q. Based on that research, plus the Preston Gates memo you  
16 saw, you essentially came to the conclusion and opinion -- I am  
17 not going to ask you what it was -- that you gave Mr. Tucker?

18 A. All of those efforts formed the basis of my legal opinion.

19 MR. SCOTTEN: Objection as cumulative and not relevant  
20 to Mr. Muir. This has all been gone through with Mr. Tucker.

21 THE COURT: Overruled. I will allow it.

22 Q. The documents we have seen that the government and Mr. Roth  
23 introduced contain the information you passed on to Mr. Tucker?

24 A. Yes.

25 Q. At the time you were doing that research, you had been a

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Cohen - Redirect

1 lawyer for just about 30 years, is that right?

2 A. Yes. By May of 2004, I had finished 30 years.

3 MR. BATH: Thank you so much.

4 THE COURT: Any redirect?

5 MR. ROTH: Yes, your Honor.

6 REDIRECT EXAMINATION

7 BY MR. ROTH:

8 Q. Good morning, Mr. Cohen.

9 A. Good morning Mr. Roth.

10 MR. ROTH: Could we have D151 back on the screen,  
11 please.

12 Can you highlight the first paragraph there, Eli,  
13 please.

14 Q. The government raised the last sentence with you. "Without  
15 that, these enterprises are too easy to attack as outside the  
16 protection of sovereign immunity."

17 Do you see that?

18 A. I do.

19 Q. You never expressed an opinion that the tribal model as it  
20 existed would fail an attack by government regulators, is that  
21 fair to say?

22 A. It's fair to say I never made a conclusion that they would  
23 fail. My concern was to have the facts best support the legal  
24 rules that I had discovered through my research.

25 Q. Right. By the way, you're a very meticulous lawyer, is

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1 that fair to say? You take your job seriously?

2 A. I do.

3 Q. You talked about the Bachman memo. The Bachman memo, if  
4 you will, that wasn't like a recipe for like chocolate chip  
5 cookies, where if you left out the chocolate you wouldn't have  
6 chocolate chip cookies, is that fair to say?

7 A. It is fair to say that.

8 Q. What I am driving at, it listed some factors and some  
9 suggestions, things that should happen, but it was not a  
10 pronouncement of the law, is that fair to say?

11 A. It was an opinion based on Ms. Bachman reviewing a variety  
12 of cases, some of which were more helpful to the Tucker  
13 enterprise model and others were less helpful.

14 It's typical of many areas of the law where things are  
15 not entirely clear so lawyers try to find an argument that best  
16 fits the client's situation.

17 Q. Your whole intention in giving the advice and listing the  
18 factors to be considered in evaluating the model was to  
19 strengthen his arguments, to make his arguments more  
20 defensible, that the model was a legitimate model, is that fair  
21 to say?

22 MR. SCOTTEN: Objection to form.

23 A. Yes.

24 THE COURT: Overruled.

25 Q. And all of these suggestions you were making to him to

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1 defend the tribal model, when you say defend, that was within  
2 the context of a regulatory challenge, is that fair to say, or  
3 a civil challenge?

4 A. Yes.

5 Q. You never told Mr. Tucker to cease his tribal model  
6 activities, is that fair to say?

7 A. I never told him to cease his plan.

8 Q. Thank you.

9 MR. ROTH: No further questions.

10 THE COURT: You may step down.

11 (Witness excused)

12 THE COURT: Ladies and gentlemen, why don't we stand  
13 up and stretch for a moment.

14 The defendant may call its next witness.

15 MR. ROTH: The defense calls Conly Schulte.

16 CONLY JOHN SCHULTE,

17 called as a witness by the defendants,

18 having been duly sworn, testified as follows:

19 THE DEPUTY CLERK: State your name and spell it for  
20 the record.

21 THE WITNESS: My name is Conly John Schulte.

22 C-O-N-L-Y, J-O-H-N, S-C-H-U-L-T-E.

23 THE COURT: You may inquire.

24 MR. ROTH: May I give him some water?

25 THE COURT: Yes.

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Schulte - Direct

1 DIRECT EXAMINATION

2 BY MR. ROTH:

3 Q. Good morning, Mr. Schulte.

4 A. Good morning.

5 Q. How old are you, sir?

6 A. I am 49 years old.

7 Q. Where were you born, sir?

8 A. I was born in a town called Hartington, Nebraska.

9 Q. Where do you currently reside?

10 A. Boulder, Colorado.

11 Q. What is your educational background, sir?

12 A. I received a bachelor's degree in political science from  
13 the University of Nebraska and a law degree from Creighton  
14 University School of Law.

15 Q. When you got out of law school, sir, where were you first  
16 employed?

17 A. I was first employed as a law clerk to Judge John Irwin on  
18 the Nebraska Court of Appeals.

19 Q. And subsequent to that, sir?

20 A. After that I was employed at a law firm called Peebles &  
21 Evans in Omaha, Nebraska.

22 Q. What areas of practice did you conduct at that firm?

23 A. That firm was formed to focus exclusive or nearly  
24 exclusively on federal Indian law and in the representation of  
25 American Indian tribes and their interests.

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Schulte - Direct

1 Q. Did you continue staying at that firm?

2 A. Yes. Although the name of the firm has changed since that  
3 time, I have been employed and now currently a partner in that  
4 law firm.

5 Q. How big is that law firm, sir?

6 A. I think we have approximately 40 attorneys.

7 Q. Where are the offices of that firm, sir?

8 A. We have offices in Washington, D.C.; Omaha, Nebraska; Rapid  
9 City, South Dakota; Louisville, Colorado; Peshawbestown,  
10 Michigan; and Sacramento, California.

11 Q. You indicated, sir, you do Native American law, is that  
12 correct?

13 A. That is correct.

14 Q. And approximately how many tribes does the firm represent?

15 A. Wow. I would say -- this is kind of ballpark because at  
16 any one given time it can change -- I would say between 40 and  
17 50.

18 Q. Sir, what type of practice do you do in respect to those  
19 tribes, what type of law?

20 A. Well, it varies by the tribe. For some tribes we are their  
21 general legal counsel, which means we are kind of like an  
22 attorney general for the tribe, but also corporate counsel  
23 because they engage in business activities. So we do all of  
24 their day-to-day legal counseling.

25 For other tribes we may have specific engagements for

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Schulte - Direct

1 a particular piece of litigation or a particular project.

2 Q. Do you do tribal governance as well, sir?

3 A. Yes.

4 Q. Do you do anything in respect to law enforcement with the  
5 tribe, sir?

6 A. Our firm does advise with regard to tribal law enforcement  
7 from time to time.

8 Q. Does the firm engage in counseling for nontribal parties  
9 contracting with tribes?

10 MR. SCOTTEN: Objection. Relevance. It's a fact  
11 witness.

12 THE COURT: Sustained.

13 Q. Did there come a time, sir, when you had contact with Scott  
14 Tucker?

15 A. Yes.

16 Q. Do you recall the nature of the initial contact that you  
17 had, sir?

18 A. Yes. My recollection is that I was invited to a meeting of  
19 a current client of the firm called Santee Sioux Nation, which  
20 is Indian tribe, to attend a meeting with regard to a business  
21 opportunity that someone wished to present to the tribe  
22 council.

23 Q. Did he at some point contact you by fax or e-mail, sir?

24 A. Yes. After that initial meeting, I believe I received a  
25 fax from Mr. Tucker and had a phone call.

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Schulte - Direct

1 Q. What was the nature of that fax, sir?

2 A. My recollection is the fax contained a letter from Mr.  
3 Tucker to the tribe explaining a business opportunity, I  
4 believe a draft service agreement, and then also an opinion  
5 letter from a law firm out of Seattle.

6 MR. ROTH: I would ask that the witness be shown  
7 Defendants' 406.

8 Q. It should be on the screen in front of you, sir.

9 Do you recognize this document, sir?

10 A. Yes.

11 MR. ROTH: If you can flip through the pages, Eli,  
12 please.

13 Q. It's an 11-page document?

14 A. How do I flip through them?

15 Q. No.

16 A. Sorry.

17 Q. Having reviewed that, do you recognize that document before  
18 you?

19 A. Yes. That appears to be the fax that I received from Mr.  
20 Tucker, and it's dated September 30, 2003.

21 MR. ROTH: I would move that into evidence, your  
22 Honor.

23 MR. SCOTTEN: Objection. Relevance.

24 THE COURT: Let me see you at sidebar.

25 (Continued on next page)

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Schulte - Direct

1 (At the sidebar)

2 THE COURT: What is the date of the fax?

3 MR. ROTH: September, I think it's 23rd.

4 THE COURT: What is the relevance?

5 MR. ROTH: It sets the initial meeting agenda that  
6 they had and the predicate for his later engagement.

7 THE COURT: You can establish the predicate for his  
8 later engagement without offering the document. I am not going  
9 to preclude you from establishing the later engagement. But we  
10 have had extensive colloquy on this. So I am going to sustain  
11 the objection on relevance grounds.

12 MR. ROTH: Your Honor, in respect to the other  
13 question that was sustained, the objection, as to his  
14 relationship and practice with nontribal entities, I think  
15 ultimately as a fact witness he will be talking about  
16 activities that he did, specific things that he did, in respect  
17 to Tucker's organization vis-a-vis the Indians as a factual  
18 matter.

19 It's our position, Judge, that their prosecution  
20 theory is very, very direct, that this is all sham  
21 organizations, one, two, three, whatever it is. And that to  
22 rebut that we want to establish why he created certain entities  
23 and their relationship to Tucker's entities to show that his  
24 intention was, and that was also communicated to Mr. Tucker and  
25 influenced Mr. Tucker's state of mind, that these were

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Schulte - Direct

1 legitimate endeavors and enterprises that were created.

2 THE COURT: What are you trying to elicit from him? I  
3 am still a little bit uncertain of what you want to establish  
4 from him in this regard.

5 MR. ROTH: Well, he helped the business model. He  
6 helped on various aspects of the business model between Tucker  
7 and the tribes, that that was a legitimate endeavor and it  
8 wasn't a sham. Everything that he did in terms of his  
9 organization.

10 THE COURT: That's your argument. I am trying to find  
11 out what facts are you trying to elicit from him.

12 MR. ROTH: That he set up this corporation.

13 THE COURT: For whom?

14 MR. ROTH: He advised and set it up for Tucker and the  
15 Indians. At some point they had a joint -- they had waivers.  
16 They had waivers of any conflict.

17 THE COURT: I don't know what you're talking about.  
18 You have to make yourself clear. What waivers? This is the  
19 first time I am hearing waivers.

20 MR. ROTH: Conflict waivers.

21 THE COURT: So tell me about this because this is the  
22 first time I am hearing it in this case.

23 MR. ROTH: I apologize, your Honor.

24 After he was retained by Mr. Tucker, he had a conflict  
25 waiver signed by the Santee, and he advised Mr. Tucker as well.

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Schulte - Direct

1           THE COURT: I am still not understanding what you  
2 believe that you have been precluded from establishing that  
3 you're trying to establish.

4           MR. ROTH: Right now you haven't precluded me from  
5 anything.

6           THE COURT: Ask your next question.

7           MR. GINSBERG: Just clarification. I think there is a  
8 fax cover sheet with this exhibit and the attachment is the  
9 opinion letter.

10          MR. ROTH: Yes.

11          MR. GINSBERG: It is the opinion letter, which is  
12 already in evidence through another witness. So I don't know  
13 if your Honor --

14          THE COURT: I understand it's already in evidence.

15          MR. GINSBERG: The letter part is in evidence. It's  
16 just a fax cover sheet really that needs to be moved into  
17 evidence at this point.

18          MR. SCOTTEN: I don't think we are disputing that Mr.  
19 Tucker sent a fax to him. I am not sure what the fax cover  
20 page adds, but if they want to redact it with just the fax  
21 cover page, we have no objection to put in the fax cover page.

22          MR. GINSBERG: But it doesn't need to be redacted  
23 since the rest of it is already in evidence.

24          MR. SCOTTEN: They are trying to work in that  
25 Mr. Schulte received this e-mail and he has got all this

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Schulte - Direct

1 expertise, and look, here is how blessed this was going  
2 forward. It's already in evidence. There is no reason to  
3 introduce it for the fact that it was also sent to him.

4 MR. GINSBERG: It's still in evidence.

5 THE COURT: It is in evidence.

6 MR. GINSBERG: Once it's in evidence, as long as  
7 something improper isn't done in relation to asking questions  
8 about it, that your Honor wouldn't permit, he is allowed to  
9 indicate, here is the fax cover sheet and what is attached.

10 THE COURT: What is the relevance to this case of Mr.  
11 Tucker providing a copy of the Bachman letter? What is the  
12 relevance to this case?

13 MR. ROTH: The relevance is later it's the basis for  
14 them to form the relationship, the legal relationship, where  
15 Tucker engages --

16 THE COURT: How does that work? Excuse me a second.  
17 I don't understand how the transmittal of the Bachman letter  
18 can lead to the formation of a relationship.

19 MR. ROTH: Judge, because it was an understanding  
20 between the parties that later they would talk and have a  
21 relationship.

22 THE COURT: I will tell you what. Try and lay your  
23 foundation for that through this man, and if you lay the  
24 foundation, then the fax comes in. OK? It's as simple as  
25 that. So far I haven't heard how it's relevant.

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Schulte - Direct

1           MR. SCOTTEN: I suppose my concern is laying the  
2 foundation is essentially going to be the prejudicial questions  
3 we are trying to keep out, which is, well, wasn't this really a  
4 great legal opinion so you were willing to go into business  
5 with the man.

6           MR. GINSBERG: It's a precursor. It's the first thing  
7 this witness received. Mr. Schulte then goes on from there to  
8 do whatever he does, in terms of getting waivers, ultimately  
9 giving advice. I know that's a separate issue, but it's the  
10 precursor to his beginning to understand what it is both the  
11 tribe and Mr. Tucker want him to do. And it's just the  
12 beginning of how he understands what it is they are asking him  
13 to do when he looks at this letter and he looks at this letter  
14 as the beginning piece of that.

15          MR. SCOTTEN: They are trying to show the state of  
16 mind of the witness, which is not relevant. Trying to show  
17 that the witness, with all his great expertise, believed this  
18 was legitimate is not proper.

19          MR. ROTH: Right after this, to show why this is the  
20 foundation for the relationship that grew, is when Tucker  
21 contracted Conly Schulte to work on the Kickapoo.

22          THE COURT: So far you haven't shown me that it's  
23 relevant. Ask a question. Let's see what happens.

24           (Continued on next page)

Ha4Wtuc2

Schulte - Direct

1 (In open court)

2 BY MR. ROTH:

3 Q. Mr. Schulte, when you received the fax from Mr. Tucker, did  
4 he indicate to you that he was going to have a call with you in  
5 the future?

6 A. I don't recall the specifics of the conversation, but I do  
7 recall that I subsequently reviewed that fax and the  
8 information in it, and subsequently had conversations with  
9 Mr. Tucker.

10 Q. I'm asking, if you look at the fax cover sheet, and if you  
11 look at the message on it, does that indicate, sir, that  
12 Mr. Tucker asked you to give a call?

13 MR. SCOTTEN: Objection.

14 A. It does.

15 THE COURT: Overruled.

16 BY MR. ROTH:

17 Q. Does that refresh your recollection --

18 MR. ROTH: I'm sorry.

19 THE COURT: OK. Go ahead.

20 A. Yes. It indicates that he asked me to call him after I had  
21 had a chance to review it.

22 Q. And did you eventually call him, sir?

23 A. Yes.

24 Q. And what was your understanding of Mr. Tucker's intention  
25 to have a conversation with you to be?

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Schulte - Direct

1 A. I -- well, I understood that he wished to discuss with me  
2 the contents of that opinion letter and whether -- and my  
3 thoughts and views on the content of that letter.

4 THE COURT: Were you his lawyer at the time?

5 THE WITNESS: At this particular point in time?

6 THE COURT: Yes.

7 THE WITNESS: No. I subsequently was retained by him.

8 THE COURT: And when were you retained by him?

9 THE WITNESS: We had a written engagement in, I  
10 believe, May of 2004, your Honor.

11 THE COURT: All right. When in your mind did you  
12 become Mr. Tucker's lawyer? At the time of that engagement, or  
13 some other time?

14 THE WITNESS: Well, I believe that the conversations  
15 that I had with Mr. Tucker would have been privileged within  
16 the attorney-client relationship even prior to the official  
17 written engagement.

18 THE COURT: Right. And at what point in time was  
19 that?

20 THE WITNESS: I believe that would have been  
21 approximately December of 2003.

22 THE COURT: All right. I'm going to allow the witness  
23 to testify to the conversations as of December 2003.

24 But the conversations prior to that time, you were the  
25 lawyer for the Santee Sioux tribe, is that correct?

Ha4Wtuc2

Schulte - Direct

1 THE WITNESS: That is correct, your Honor.

2 THE COURT: All right.

3 MR. ROTH: Thank you.

4 THE COURT: Ask your next question, please.

5 MR. ROTH: Can I admit the cover sheet, Judge?

6 THE COURT: No. Sustained.

7 MR. ROTH: Thank you.

8 Q. Did Mr. Tucker -- withdrawn.

9 Did you come to know an attorney named Clifford Cohen?

10 A. Yes.

11 Q. And how did you come to know him, sir?

12 A. Mr. Cohen, I believe, either phoned me or sent me a fax or  
13 a letter at some point in time, with regard to the Kickapoo  
14 tribe.

15 Q. And what was the content of that fax, if you recall?

16 MR. SCOTTEN: Objection.

17 A. I recall that --

18 MR. SCOTTEN: Hearsay.

19 THE COURT: Yes. Sustained.

20 BY MR. ROTH:

21 Q. You said that Mr. Tucker retained you to do some work on  
22 the Kickapoo tribe. What specifically did he retain you to do?

23 A. I was introduced to the Kickapoo tribe's general legal  
24 counsel through Mr. Cohen and was asked to assist the Kickapoo  
25 tribe in the drafting of tribal, tribal ordinances, lending

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Schulte - Direct

1 ordinances, I believe, and perhaps even a corporation's code or  
2 organizational documents for a tribal entity. I'm not sure if  
3 it was both, but it was one or the other, possibly both.

4 Q. And were you actually formally engaged by the Kickapoo?

5 A. I was.

6 Q. And who paid your legal fees, sir?

7 A. There was an understanding that Mr. Tucker's company would  
8 pay the legal fees for my work for the Kickapoo tribe.

9 Q. Was that an unusual arrangement, retention arrangement, in  
10 your experience?

11 A. No.

12 Q. Sir, did you have occasion to do any work with the Yurok  
13 nation?

14 A. Yes, I did.

15 Q. And what was the nature of the work that you did with the  
16 Yurok nation?

17 A. It was similar to the work that I'd been asked to do for  
18 the Kickapoo tribe, to assist the Yurok's general legal counsel  
19 with the drafting of tribal lending laws and the formation of a  
20 tribally owned entity that would be formed under tribal law to  
21 engage in lending activities.

22 Q. Who was the Yurok's counsel at that time?

23 A. I believe her name was Lisa Adams.

24 Q. And did you, in fact, draft ordinances and other documents  
25 in respect to the Yurok nation?

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Schulte - Direct

1 A. Yes. I prepared draft, I believe, lending ordinances and  
2 organizational documents for a tribal entity.

3 THE COURT: How is any of this relevant to this case?

4 MR. ROTH: Judge, there was testimony from the Yurok  
5 people that suggested that Mr. Tucker blew them off, so to  
6 speak, and I think this witness will testify why the  
7 relationship did not come to fruition, to directly rebut it.

8 THE COURT: All right. I'll allow it for the moment.  
9 Go ahead.

10 BY MR. ROTH:

11 Q. To your knowledge, sir, did the Yurok nation pass those  
12 ordinances?

13 A. My recollection is that they did not.

14 Q. And based on that, sir, did you communicate to Mr. Tucker  
15 that it would not be suitable to pursue that?

16 MR. SCOTTEN: Objection. Leading.

17 THE COURT: Yes. Avoid the leading.

18 Q. Did you at some point indicate to Mr. Tucker the problem  
19 with not having those ordinances signed?

20 A. Yes.

21 MR. SCOTTEN: Objection. Relevance.

22 THE COURT: Yes.

23 This was at what point in time, sir?

24 THE WITNESS: Your Honor, I believe this was sometime  
25 in mid to late 2004.

Ha4Wtuc2

Schulte - Direct

1 THE COURT: All right. And you were acting as  
2 Mr. Tucker's lawyer when you did this?

3 THE WITNESS: Yes, your Honor.

4 THE COURT: OK.

5 MR. SCOTTEN: Can we approach, your Honor? I don't  
6 want to speak.

7 THE COURT: No. I'm going to allow it.

8 Go ahead.

9 MR. ROTH: I'd ask that the witness be shown D304,  
10 please.

11 Q. I'd ask you to read that to yourself, sir, and I'd ask  
12 whether or not that's a communication from you to Mr. Tucker  
13 regarding your recommendation on the Yurok issue. And I would  
14 direct your attention to paragraph 3.

15 A. Yes.

16 Q. Do you recognize that to be an email that you sent to him,  
17 to Mr. Tucker?

18 A. Yes.

19 MR. ROTH: Judge, I ask that that be moved into  
20 evidence.

21 THE COURT: Any objection?

22 MR. SCOTTEN: Yes, your Honor. Can I ask the witness  
23 a question?

24 THE COURT: Yes.

25 VOIR DIRE EXAMINATION

Ha4Wtuc2

Schulte - Direct

1 BY MR. SCOTTEN:

2 Q. Mr. Schulte, do you know if at this time Mr. Tucker was  
3 already engaged in payday lending?

4 A. I'd have to look at the date.

5 MR. ROTH: Objection, your Honor. In respect to this  
6 document, I don't think it's proper voir dire.

7 THE COURT: I think it goes to the date.

8 Go ahead.

9 A. It was my understanding that there was some lending  
10 activity taking place, although I don't believe it was with the  
11 Yurok tribe.

12 MR. SCOTTEN: Objection based on the prior motions we  
13 filed, your Honor, as to the timing of the two events.

14 THE COURT: Ladies and gentlemen, I'll give you  
15 instructions at the conclusion of this case on what's called  
16 advice of counsel, and I'll tell you about the timing of when  
17 the advice needs to be given in order for it to be properly  
18 considered or how the timing of that advice factors into your  
19 proper consideration. But I'll allow this in for the moment.

20 (Defendants' Exhibit D304 received in evidence)

21 MR. ROTH: Thank you, your Honor.

22 Could you publish that, Eli, and if you could  
23 highlight the third paragraph.

24 BY MR. ROTH:

25 Q. Could you tell us what you said in that paragraph to

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Schulte - Direct

1 Mr. Tucker, what you communicated?

2 A. Would you like me to read it?

3 Q. If you could, at least the first couple of sentences.

4 A. OK. It says, "On the Yurok issue, if they're not willing  
5 to enact the ordinances, I recommend that we cancel the  
6 contract. Not worth the risk when you've got other tribes that  
7 are willing to do what it takes to put up a best defense."

8 Q. That's dated when, sir?

9 A. December 16, 2004.

10 MR. ROTH: You can take that down, Eli. Thank you.

11 Q. Did there come a time, sir, when you actually, on behalf of  
12 Mr. Tucker, wrote a letter to Lisa Adams, the tribal counsel,  
13 in regard to this matter for the Yurok?

14 A. I believe that I did.

15 MR. ROTH: I'd ask that the witness be shown D2602,  
16 please. That's a two-page letter. If you could just flip the  
17 page, Eli.

18 Q. You can take your time and review that, sir.

19 A. OK.

20 Q. OK. You recognize that as a letter that you wrote to  
21 Ms. Adams?

22 A. I do.

23 MR. ROTH: I'd move that into evidence, your Honor.

24 THE COURT: Any objection?

25 MR. SCOTTEN: Yes, your Honor. Relevance. It's a

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Schulte - Direct

1 letter between two attorneys.

2 MR. ROTH: Judge, as I stated before, this is just  
3 straight-up rebuttal to their argument that they made why the  
4 relationship didn't go forward.

5 MR. SCOTTEN: He can state it, but the relevance of  
6 two pages of legal correspondence between lawyers is not at all  
7 relevant.

8 THE COURT: I'll sustain the objection. You can  
9 elicit testimony from the witness.

10 MR. ROTH: Thank you.

11 You can take that down, Eli.

12 Q. Why did you tell Ms. Adams that the relationship with  
13 Mr. Tucker's entity and the Yuroks could not go forward?

14 MR. SCOTTEN: Objection. Still hearsay, what  
15 happened.

16 THE COURT: I'll take it for the fact that it was said  
17 to this individual.

18 Go ahead.

19 A. I recall that I explained to her that the Yurok tribe  
20 needed to enact the lending ordinances and also establish a  
21 tribal entity, wholly owned by the tribe, to engage in lending,  
22 and that unless those actions took place, the loans -- there  
23 could be no lending that would be lawful, and therefore, the  
24 relationship with Mr. Tucker's company could not continue.

25 Q. Thank you.

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Schulte - Direct

1 Did there come a time, sir, when you were formally  
2 engaged by Mr. Tucker in terms of an actual retainer agreement?

3 A. Yes.

4 Q. And do you recall approximately when that was, sir?

5 A. I believe it was approximately May of 2004.

6 MR. ROTH: I'd ask that the witness be shown  
7 defendants' 407.

8 Q. Do you recognize that letter, sir?

9 A. I do.

10 Q. And what do you recognize that letter to be?

11 A. It's a special counsel contract between my law firm and  
12 National Money Service.

13 Q. And what is a special counsel contract? Explain it, if you  
14 would, for the jury.

15 A. A special counsel contract is where a law firm is engaged  
16 for a particular purpose.

17 Q. And what was the purpose that you were engaged for in  
18 regard to National Money Service?

19 A. May I look at the, just read and see if it states in  
20 there --

21 Yes. It states that Monteau & Peebles, my law firm, shall  
22 provide legal counseling with regard to client services related  
23 to tribally regulated lending activities.

24 MR. SCOTTEN: Objection. He's reading from an exhibit  
25 not in evidence.

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Schulte - Direct

1 THE COURT: Yes.

2 MR. ROTH: I would move it in, your Honor.

3 THE COURT: Any objection?

4 MR. SCOTTEN: No, your Honor.

5 THE COURT: All right. It's received.

6 (Defendants' Exhibit 407 received in evidence)

7 BY MR. ROTH:

8 Q. Sir, when you were retained -- after you were retained by  
9 Mr. Tucker's entity National Money Service, were you at the  
10 time retained by the Santees as well, engaged by them?

11 A. Yes. My firm -- Santee Sioux had been a long-time client  
12 of my law firm, dating even prior to the time that I was hired  
13 by the firm.

14 Q. And what kind of matters were you doing for the Santee?

15 A. We were their general legal counsel, so all sorts of  
16 matters, from day-to-day counseling to litigation and other  
17 matters.

18 Q. Once you became retained by Mr. Tucker, did you notify the  
19 Santee of any potential conflict of interest?

20 A. Yes.

21 Q. And what did you do? Were any actions taken in respect to  
22 your notification?

23 A. Yes. I notified both the Santee Sioux and Mr. Tucker that  
24 I was representing both parties and requested a waiver of  
25 conflict of interest from both of them.

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Schulte - Direct

1 MR. ROTH: I'd ask that the witness be shown D312,  
2 please.

3 Q. Do you recognize this document, sir?

4 A. Yes.

5 Q. And what do you recognize it to be, sir?

6 A. It is a resolution of the tribal council of the Santee  
7 Sioux Nation.

8 Q. And what does the resolution concern?

9 A. Is there a second page to the resolution?

10 Q. Yes.

11 MR. ROTH: We can flip it.

12 A. It acknowledges --

13 Q. I'm just asking, do you recognize the document?

14 A. Yes, I do.

15 Q. Did you draft that document, sir?

16 A. It would either have been me or someone working under my  
17 supervision.

18 Q. And that was signed by the Sioux nation as well?

19 A. Yes, it was signed by the tribal council of the Santee  
20 Sioux Nation.

21 MR. ROTH: I'd offer that exhibit, your Honor, D312.

22 MR. SCOTTEN: Objection. I don't believe he's the  
23 proper witness to lay a foundation for a tribal ordinance.

24 Q. Was this a document that you had or your office had a hand  
25 in preparing?

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Schulte - Direct

1 A. Yes.

2 Q. And what does the document purport to say, the resolution  
3 clause?

4 MR. SCOTTEN: Objection. It's not in evidence.

5 MR. ROTH: If he understands.

6 THE COURT: No, no. Lay the foundation.

7 Did you prepare this document?

8 THE WITNESS: It would either have been myself or  
9 someone under my supervision, your Honor.

10 THE COURT: All right.

11 And your objection, sir, is?

12 MR. SCOTTEN: I don't believe that an outside party  
13 can lay the foundation for a passed tribal ordinance. If there  
14 was a draft he wanted to submit, perhaps, but the fact that it  
15 was enacted by the Santee Sioux is not proper for this witness.

16 THE COURT: Do you know whether or not it was enacted  
17 by the Santee Sioux?

18 THE WITNESS: Yes, I do.

19 THE COURT: Overruled.

20 BY MR. ROTH:

21 Q. And was it enacted?

22 THE COURT: Was it enacted?

23 THE WITNESS: Yes, your Honor.

24 THE COURT: Overruled.

25 MR. ROTH: I'd move D312.

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Schulte - Direct

1 THE COURT: Received.

2 (Defendants' Exhibit D312 received in evidence)

3 BY MR. ROTH:

4 Q. And you indicated, sir, that you also notified Mr. Tucker  
5 of any potential conflict of interest that might arise as a  
6 result of you representing both he and the Santee Sioux. Is  
7 that correct?

8 A. That is correct.

9 Q. And did you have occasion to write him a letter indicating  
10 that, sir?

11 A. I believe I did.

12 MR. ROTH: I'd ask that the witness be shown  
13 defendants' 409.

14 Q. And you could read that to yourself. It's a one-page  
15 letter.

16 Do you recognize that letter, sir?

17 A. I do.

18 Q. What do you recognize it to be, sir?

19 A. It is a letter notifying Mr. Tucker that our firm  
20 represents the Santee Sioux Nation and that there is a  
21 potential conflict of interest in representing both  
22 Mr. Tucker's company and the Santee Sioux Nation in an  
23 anticipated transaction, and requests that Mr. Tucker waive  
24 that conflict of interest.

25 Q. And do you know whether Mr. Tucker -- this is not executed,

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1 but executed a copy of that document?

2 A. Yes.

3 MR. ROTH: I would move in 409, your Honor.

4 THE COURT: Any objection?

5 MR. SCOTTEN: No objection.

6 THE COURT: Received.

7 (Defendants' Exhibit D409 received in evidence)

8 BY MR. ROTH:

9 Q. Directing your attention now to the Miami Tribe of  
10 Oklahoma, could you tell us your scope of representation or  
11 history with that tribe?

12 A. Yes. I was introduced to the Miami Tribe of Oklahoma by  
13 Mr. Tucker, after I was retained by his company, UMS. I was  
14 requested by the legal counsel for the Miami tribe, Mr. Ken  
15 Bellmard, to assist them in preparing draft lending codes and,  
16 I believe, also organizational documents for a tribally owned  
17 entity that would engage in lending.

18 MR. SCOTTEN: Your Honor, could we have a date?

19 THE COURT: Yes, please.

20 Q. Do you recall when that was, sir?

21 A. I believe that was sometime in the middle of 2004.

22 Q. And did you ever see the actual -- to your knowledge, was  
23 there a service agreement between the Miami Tribe of Oklahoma  
24 and Mr. Tucker's entity, UMS?

25 A. Yes, there was an agreement between the Miami tribe and

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Schulte - Direct

1 Mr. Tucker's company prior to my being hired by Mr. Tucker's  
2 company.

3 Q. What type of advice did you give and for what period of  
4 time did you give it to the Miami nation?

5 MR. SCOTTEN: Objection. Relevance. Advice as to  
6 Mr. Tucker's relevant, not other entities.

7 THE COURT: Rephrase the question, please.

8 Q. What kind of advice did you give to Mr. Tucker in general  
9 in respect to his relationship with the Miami nation?

10 A. Well, generally I counseled Mr. Tucker and his company  
11 about the Indian law related to aspects of the lending  
12 operation, both with regard to structure of tribal entities  
13 that would need to be in place as well as tribal laws that  
14 would need to be enacted in order to regulate the lending  
15 transactions.

16 At the time, this was a very new area of the law. The law  
17 of the Internet in general was very new.

18 MR. SCOTTEN: Objection. Appears to be expert  
19 testimony.

20 THE COURT: Yes. Sustained, and stricken as to the  
21 last part.

22 Next question.

23 Q. Did you have discussions with Mr. Tucker in regard to  
24 sovereignty and sovereign tribal immunity?

25 A. Yes.

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Schulte - Direct

1 MR. SCOTTEN: Could we have a time of these  
2 discussions, your Honor?

3 THE COURT: Yes.

4 BY MR. ROTH:

5 Q. At the initial period of time, in 2003, 2004.

6 THE COURT: No, no, no. Mr. Roth, you've been here  
7 for the last several days, sir.

8 BY MR. ROTH:

9 Q. After -- in 2004, sir.

10 A. Yes.

11 MR. SCOTTEN: If we could have more specificity, your  
12 Honor.

13 BY MR. ROTH:

14 Q. In December of 2004.

15 THE COURT: Did you have discussions in December of  
16 2004. That's the present question.

17 THE WITNESS: I would have had ongoing discussions  
18 with Mr. Tucker beginning in May of 2004, so yes, December of  
19 2004 would have been within that time frame.

20 MR. SCOTTEN: I guess the point in time I would fix,  
21 your Honor, if we're permitted, is, were Mr. Tucker's  
22 corporations already involved in litigation by the time this  
23 advice was given.

24 MR. GINSBERG: Your Honor, respectfully, could we have  
25 a sidebar if there are going to be speaking objections?

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Schulte - Direct

1 THE COURT: Yes, we'll do this at the sidebar.

2 Ladies and gentlemen, let me just take a moment here.

3 The witness may be excused. Sir, you can step down.

4 MR. SCOTTEN: Your Honor, is there a chance we could  
5 approach and discuss it and do the instruction after the break,  
6 if we may have objection to allowing that? I can't be sure.

7 MR. ROTH: I didn't hear what he said.

8 THE COURT: You're excused. Thank you.

9 (Witness not present)

10 THE COURT: Ladies and gentlemen, the concept of  
11 advice of counsel is that you seek, in good faith, the advice  
12 of a lawyer before you embark on a course of action. That is  
13 the concept, and it may go to reflect on the state of mind of  
14 the individual who receives the advice. Of course, the advice  
15 of counsel is dependent upon what's disclosed to the lawyer as  
16 well. These are factors that you will be taking account of,  
17 and I'll give you further instructions on it as we go on. But  
18 as you can see from what I've said, the timing becomes  
19 important.

20 Now, it's a very bad analogy and imperfect analogy,  
21 but when we were little, we would ask our moms if we could take  
22 a cookie out of the cookie jar, perhaps, and you asked before  
23 you engaged in dipping your hand in the cookie jar. And we  
24 remember what happened when we didn't. Well, that's a very  
25 imperfect analogy, but the concept is that you get advice

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1 before you embark on a course of conduct, not after you've  
2 already gone down that route.

3 That's the general concept I wanted to convey to you.  
4 I'll tell you more about how you can consider it, or not  
5 consider it, when we get to the final instructions in the case.

6 Ladies and gentlemen, we're going to take a recess and  
7 see you in ten minutes.

8 (Continued on next page)

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Schulte - Direct

1 THE COURT: Yes, Mr. Scotten.

2 MR. SCOTTEN: Your Honor, I take it from the Court's  
3 ruling that it's inclined to at least allow testimony during  
4 the contracting phase of this, even if you later accept  
5 reference to the phase where maybe a tribe hasn't started  
6 having loans issued in its name but while Mr. Schulte is sort  
7 of running around drafting agreements.

8 I think we're now into the area, however, where  
9 they're trying to elicit testimony that is postlitigation,  
10 where the state has actually already reached out to Mr. Tucker  
11 and contacted him. The testimony, actually this morning from  
12 Mr. Cohen, was that in early 2004, the Kansas state banking  
13 commission began looking into this. The letters, which are now  
14 in evidence, show that that was no later than March 10, 2004.  
15 I don't think there's any precedent or reason that someone  
16 could testify as to essentially advice of counsel they received  
17 during their litigation defense.

18 Many organizations retain attorneys to defend a case,  
19 and they can do so ethically, one, not even believing conduct  
20 was correct *ex ante*.

21 THE COURT: *Ex ante*. That's a \$2 expression here.

22 MR. SCOTTEN: Beforehand. My apologies, your Honor.

23 THE COURT: All right. Go ahead.

24 MR. SCOTTEN: The idea that you have an attorney  
25 counseling you on how to proceed with a venture once you've

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Schulte - Direct

1 already been told by regulatory authorities that it at least  
2 may be improper, that they want to investigate you, I think,  
3 would be without support, and it certainly can't go to  
4 Mr. Tucker's state of mind to say: "I've been lending for a  
5 while now. Kansas state banking commission's after me. I've  
6 retained an attorney who is going to be my litigator, who is  
7 going to be in court advocating my defense. I want to tell the  
8 jury about all the things he said to me when he was telling me  
9 how he was going to defend my case," as though that's  
10 equivalent to advice of counsel.

11 It's actually very different and, I think,  
12 prejudicial. I'm sure all these attorneys here would say  
13 wonderful things about Mr. Tucker's legal position to a court.

14 THE COURT: I got your point.

15 Mr. Roth.

16 MR. ROTH: Judge, I think that Mr. Schulte told you  
17 when he thought the lawyer-client relationship formed, which  
18 was at a certain point after he was initially contacted by  
19 Mr. Tucker.

20 THE COURT: He said December 2004.

21 MR. ROTH: 2003.

22 THE COURT: 2003.

23 He said there was a formal retainer in May of 2004,  
24 and I followed up, because we all know a formal retainer is not  
25 necessary in order to form an attorney-client relationship, and

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Schulte - Direct

1 he responded December 2003.

2 OK. Yes?

3 MR. ROTH: I believe that's the starting point.

4 THE COURT: Yes, I got that. Now do you want to  
5 respond to Mr. Scotten's argument?

6 In essence, if I understand it, there is a starting  
7 point for advice of counsel, but in essence, there's an ending  
8 point, and there are some factual questions here. This is why  
9 I've given the defense a little bit of latitude about when it  
10 engaged in certain payday lending activities. I think  
11 Mr. Scotten takes a different and narrower view than the  
12 defense has, and my view is that I'm giving the defense some  
13 latitude because it's really up to the jury to decide when  
14 Mr. Tucker began. But once we're at a point when he's engaged  
15 in payday lending activities utilizing the tribal model, then  
16 at that point, the testimony regarding advice of counsel, if I  
17 understand Mr. Scotten's argument, is no longer something that  
18 you can elicit, because the course of conduct is now embarked  
19 on, you got the advice of counsel before you embarked on it,  
20 and that's all fair game. But once, and it may be terrible  
21 analogy, once the ship has sailed, then the subsequent advice  
22 is not relevant to the advice-of-counsel defense.

23 MR. ROTH: We understand that position, and we tried  
24 to fix the time of the first lending, which was not so easy to  
25 do, Judge.

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Schulte - Direct

1 THE COURT: Right.

2 Let me hear from Mr. Scotten.

3 MR. SCOTTEN: I think their own evidence fixed the  
4 time of first lending at least as of March 10, 2004. This is  
5 when the Kansas state banking commission, according to  
6 Mr. Cohen and the documents he submitted, reaches out to them  
7 and says, What's going on with National Money Service? And  
8 they respond, We are in league with the Inajin, which is one of  
9 the tribal model tribes they are using. I think the evidence  
10 would actually show, if we cared to introduce it, it's January.  
11 But their evidence already establishes March. That's got to be  
12 beyond dispute.

13 MR. ROTH: Judge, I think far beyond, it is in dispute  
14 because it's referencing a tribe that's not even charged in the  
15 indictment. It's not even clear that the tribe is some name  
16 attached to it. There's no evidence adduced in the record  
17 exactly what the nature of that lending was.

18 THE COURT: Let me ask a question, and this is a  
19 question. When did the lending activity begin with the first  
20 of the three tribes that are charged in the indictment?

21 MR. SCOTTEN: Here, since there hasn't been precise  
22 evidence, I do think the Court would take the defendant's  
23 proffer that it's around June or July. However, your Honor --

24 THE COURT: Of what year, sir?

25 MR. SCOTTEN: Sorry. 2004, your Honor. 2004.

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Schulte - Direct

1 THE COURT: Was I supposed to guess that, or what?

2 MR. SCOTTEN: You were not, your Honor.

3 THE COURT: OK. All right.

4 MR. SCOTTEN: I would, however, say I think the way  
5 your Honor phrased it a minute ago was the correct way, "using  
6 the tribal model." There is no uniquely unlawful conduct here  
7 about these particular tribes, and in fact, the indictment does  
8 not charge this tribe or that tribe as unlawful. It charges a  
9 conspiracy to extend illegal loans. And even in terms of the  
10 tribal model, we broke down the counts by portfolio, which the  
11 defendants would say are associated with particular tribes, but  
12 the best case for them is, Well, we have a special  
13 advice-of-counsel argument for the tribal model; not for, Well,  
14 it was legal to do it with the Miami but not with the Inajin.  
15 So I do think assuming he's using the tribal model, as the  
16 Court's question was phrased, is the correct period of time.

17 THE COURT: What's your proffer on when the first  
18 loans were extended by using the three tribes, identified as  
19 tribes 1, 2 and 3 in the indictment, and we all know which ones  
20 they are?

21 MR. ROTH: We believe, your Honor, it's around July of  
22 '04.

23 THE COURT: All right. You and the government are not  
24 far off, June, July of '04. Let me think about it on the  
25 break. Thank you for your arguments. (Recess)

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Schulte - Direct

1 (Jury present)

2 THE COURT: Go ahead, Mr. Roth.

3 MR. ROTH: Thank you, your Honor.

4 BY MR. ROTH:

5 Q. Getting back, Mr. Schulte, as of no later than December of  
6 '03, had you had conversations with Mr. Tucker regarding the  
7 tribal model?

8 A. Yes.

9 Q. What was the substance of those conversations, sir?

10 MR. SCOTTEN: Objection. I don't know if we fixed  
11 this date.

12 (Record read)

13 THE COURT: I will allow it.

14 Go ahead.

15 Q. What was the nature of those conversations, sir?

16 A. Generally, the nature of those conversations would have  
17 been how the lending operation operated and how it would  
18 operate under tribal law.

19 THE COURT: When were these conversations?

20 THE WITNESS: Your Honor, these began in about  
21 December of 2003, I believe.

22 THE COURT: OK.

23 Q. And specifically, what specific aspects of the lending  
24 operation did you discuss with Mr. Tucker at that time?

25 A. Well, I don't recall specific conversations, but I can tell

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Schulte - Direct

1 you generally. It would have been what the tribes would need  
2 to do. For instance, enacting tribal laws that would govern  
3 the lending transaction, forming a tribal entity that would be  
4 the lender and have the sole contractual right to enforce the  
5 loans with consumers. The entity would have to be informed  
6 such that it would be wholly owned by the tribe and  
7 sufficiently close to the tribe so that the tribes could apply  
8 their laws and jurisdictions to the loan transactions.

9 And then also the terms and conditions of the loans in  
10 general probably, and things of that nature.

11 Q. Did you tell him if those conditions were met what the  
12 effect of the contract would be in respect to -- the service  
13 agreement be in respect to the activities of the tribal lending  
14 model?

15 A. Can you repeat that?

16 Q. I apologize.

17 Did you discuss sovereign immunity with Mr. Tucker?

18 A. Yes.

19 Q. Did you discuss tribal sovereign immunity with Mr. Tucker?

20 A. Yes.

21 Q. What were those discussions at that time in December?

22 A. Well, in contemplating a tribally-owned lending operation,  
23 wherein Mr. Tucker's company would service those loans, we  
24 anticipated that because there were Internet transactions, and  
25 the law regarding Internet transactions was less than entirely

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Schulte - Direct

1 clear at that time because it was developing under the law --

2 MR. SCOTTEN: Objection. Getting into expertise  
3 again, I think.

4 THE COURT: What you should confine your testimony to  
5 is your best recollection of your conversation with Mr. Tucker.  
6 By that, there is a temptation that we all have in life when we  
7 can't remember something to think about what we would have said  
8 or might have said under the circumstances. That's not what  
9 you're being asked. You're being asked for your best, honest  
10 recollection of what he said to you and what you said to him.  
11 All right?

12 THE WITNESS: Yes, your Honor.

13 THE COURT: And confine your answer to that. And if  
14 you don't recall, you don't recall. If there is a document  
15 that can refresh your recollection, counsel will show you that.  
16 All right?

17 MR. ROTH: I thought the objection was about the  
18 Internet lending or something.

19 THE COURT: No. I could explain the objection to you  
20 if you would like me to do it at the sidebar.

21 MR. ROTH: I will move on. Thank you very much.

22 THE COURT: I understood the objection, and my  
23 direction, I believe, was responsive to the objection, which  
24 was it's not an opportunity for the witness to give his views  
25 of what he believes the state of the law was in 2004. That's

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Schulte - Direct

1 not the question that he was asked. That's why I gave the  
2 direction I did.

3 MR. ROTH: Thank you, Judge.

4 BY MR. ROTH:

5 Q. In your conversations with Mr. Tucker, did you discuss what  
6 the controlling factors were in the service agreement?

7 THE COURT: No leading. No leading. And I have told  
8 you what you can ask. You can ask him what Mr. Tucker asked  
9 him and what advice he gave Mr. Tucker.

10 Q. What did Mr. Tucker ask you in regard to the obligations of  
11 the servicers under the terms of the service agreement would  
12 be?

13 A. The obligations of the servicer or the tribes?

14 Q. Both, if he asked you both.

15 THE COURT: Do you recall what he asked you?

16 THE WITNESS: I recall having discussions about the  
17 respective obligations of the parties.

18 THE COURT: OK.

19 Q. What were those discussions?

20 A. Well, we discussed that, again, the tribe would need to  
21 enact the laws, to regulate the transactions. The tribes would  
22 need to form tribally-owned organizations such that tribal law  
23 would apply to the transactions.

24 The servicer was responsible for servicing the loans,  
25 which meant sort of a day-to-day servicing of the applications,

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1 taking phone calls and collections on the loans.

2 Q. At some point, sir, did you actually do an assessment for  
3 Mr. Tucker of the service agreements, a written assessment?

4 A. I believe that I did.

5 MR. ROTH: I would ask that the witness be shown  
6 Defendants' 301.

7 Q. I ask you whether that refreshes your recollection of what  
8 that document is first.

9 MR. ROTH: In the meantime, Judge, I will hand the  
10 witness a hard copy.

11 Q. It's up on your screen now, sir.

12 Do you recognize that document, sir?

13 A. Yes.

14 Q. What do you recognize that document to be, sir?

15 A. That is a letter that I sent to Scott Tucker on June 11,  
16 2004, after I had performed an initial review of agreements  
17 between his company and tribal entities.

18 Q. At that point, had you seen the Miami servicing agreement  
19 that was executed?

20 A. I believe I would have, yes.

21 MR. ROTH: I would move that into evidence, your  
22 Honor, at this time.

23 THE COURT: Any objection?

24 MR. SCOTTEN: Yes, your Honor. We may have some more  
25 information for the court on the date issue, if we may

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Schulte - Direct

1 approach.

2 THE COURT: Is that the basis for your objection?

3 MR. SCOTTEN: Yes, your Honor.

4 THE COURT: Let me see everybody at sidebar.

5 Ladies and gentlemen, please stand up and stretch.

6 (Continued on next page)

1 (At the sidebar)

2 THE COURT: Yes, sir.

3 MR. SCOTTEN: I don't know what the court has  
4 determined is relevant. If it agrees with the government's  
5 position when tribal lending began, this is already outside the  
6 date period. If the court wants to focus on the three tribes  
7 named in the indictment, we just went back down in the files  
8 and the Miami Tribe of Oklahoma was also engaged in lending as  
9 of at least March 1, 2004. This is based on documents supplied  
10 by the Miami tribe showing that TFS, which there is no dispute  
11 was Miami's early lending entity, was issuing loans as of March  
12 1.

13 THE COURT: The tribe was engaged in lending activity.  
14 Was Mr. Tucker engaged in lending activity with the tribe?

15 MR. SCOTTEN: Yes, your Honor.

16 THE COURT: You didn't say that. You said the tribe  
17 was engaged in it. That's not the issue.

18 MR. SCOTTEN: I certainly don't want to say that, your  
19 Honor.

20 THE COURT: The issue is Mr. Tucker's activities.

21 MR. SCOTTEN: Yes, it is, your Honor.

22 THE COURT: And you're representing that Mr. Tucker  
23 was engaged in payday lending activities with which tribe?

24 MR. SCOTTEN: Miami tribe, your Honor.

25 THE COURT: As of what date?

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Schulte - Direct

1 MR. SCOTTEN: No later than March 1, 2004.

2 THE COURT: Why don't you show the document to Mr.  
3 Roth and to Mr. Bath and give them an opportunity to look at  
4 it.

5 MR. BATH: Judge, we had some e-mails that we cited to  
6 the court in a letter last weekend where there are e-mails with  
7 the Miami folks talking about we would like to get this  
8 business started. That was late May and June. That's why we  
9 fixed the date then. I am not saying what he is showing you  
10 isn't -- well, we haven't seen it. We haven't had a chance to  
11 talk to our clients about it. I would still say it started in  
12 December of '03, which is prior to March. If we are using  
13 Miami tribe as the baseline, then I think we have established.

14 THE COURT: Your question is directed, or this  
15 document is directed to what time period?

16 MR. SCOTTEN: June 11.

17 THE COURT: Here is what I am going to do. I am going  
18 to allow you to offer the document and the government is free  
19 to, on its rebuttal case or however it wants to do it, to show  
20 when the lending activity actually began, and it's a question  
21 for the jury.

22 MR. ROTH: Fair enough.

23 (Continued on next page)  
24  
25

1 (In open court)

2 MR. ROTH: I would offer at this time D301.

3 THE COURT: Subject to the colloquy at the sidebar,  
4 it's received.

5 (Defendant's Exhibit D301 received in evidence)

6 BY MR. ROTH:

7 Q. Directing your attention to the first page there,  
8 Mr. Schulte, what was your scope of that letter, the retention?  
9 What were you retained to review?

10 A. I was reviewing the agreements between Mr. Tucker's company  
11 and tribal entities. I believe at that time it would have been  
12 between Mr. Tucker's company and the Miami Tribe of Oklahoma  
13 and the Modoc Tribe of Oklahoma.

14 Q. What about the Kickapoo?

15 A. And possibly the Kickapoo as well, yes.

16 Q. Going to the first paragraph there, the last sentence  
17 there, what was your conclusion, in essence?

18 A. The last paragraph of the letter?

19 Q. The last sentence of the first paragraph.

20 A. OK. Basically that I had reviewed those agreements and I  
21 was providing Mr. Tucker with my comments, observations and  
22 recommendations for amending the agreements, and the  
23 relationship between Mr. Tucker's company and the tribal  
24 entities, such that the tribal regulations of the lending  
25 transactions would be more defensible.

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1 Q. More defensible to what, sir?

2 A. To any -- it was anticipated that there would be  
3 disagreements with at least some states over whose law applied  
4 to the transactions. So in anticipation that any state  
5 regulator somewhere would either take some action or file suit  
6 or question whose law applies to the lending transactions.

7 Q. Can we go to the first paragraph, the first numbered  
8 paragraph there.

9 Have you had a chance to read that or have you  
10 refreshed your recollection in respect to this document?

11 A. I did review it during the sidebar.

12 Q. In essence, what are you saying in that paragraph, if you  
13 can paraphrase?

14 A. I was recommending that the tribes bring more value to the  
15 overall transaction. According to case law developed in other  
16 contexts, it's always a good idea to have more tribal activity  
17 occur in a transaction because it strengthens the argument that  
18 tribal law applies to a transaction.

19 Q. And you communicated that to Mr. Tucker in this letter, is  
20 that correct?

21 A. Yes.

22 Q. Go to paragraph 2.

23 A. I have got my hard copy here.

24 Q. Paragraph 2. What does that indicate to Mr. Tucker?

25 A. I recommended -- at that time there were broad powers of

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1 attorney between the tribal entities and Mr. Tucker's company,  
2 and I recommended that the duties be made more specific.

3 Q. Do you know whether that was done?

4 A. I believe it was done at some point.

5 Q. Paragraph 3, sir.

6 A. Paragraph 3 recommends that every tribe with whom Mr.  
7 Tucker's company did business should have in place a tribal  
8 lending code in order to regulate the lending transactions.

9 Q. And paragraph 4, sir.

10 A. I say while it's not essential, but it might be a good idea  
11 for the agreements to have an option for the tribes to buy out  
12 Mr. Tucker's operation after a certain amount of time.

13 Q. How long were the agreements for, as you understood them?

14 A. My recollection is five years.

15 Q. That was to comply with this recommendation, or did that  
16 comply with this recommendation?

17 A. Yeah. The agreements were in place and they did have a  
18 duration of five years. They did not have the buyout provision  
19 in that time, though.

20 Q. Paragraph 5, sir. What was that recommendation, sir?

21 A. I believe at the time the agreements between UMS and the  
22 tribes that were in place had some language that obligated the  
23 tribe to raise sovereign immunity, and I recommended that that  
24 reference be omitted from the agreements.

25 Q. Was that, to your knowledge?

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1 A. Yes, I believe it was.

2 Q. What was the significance of sovereign immunity, sir?

3 A. Again, we anticipated or I anticipated that state  
4 regulators --

5 MR. SCOTTEN: Objection, unless communicated to Mr.  
6 Tucker.

7 THE COURT: Yes. Sustained.

8 Q. Tell us only what you communicated to Mr. Tucker.

9 A. I communicated to Mr. Tucker that it would be likely that  
10 there would be state regulators that would claim that state law  
11 applied to the loan transactions and may file actions against  
12 the tribal entities, and that in those actions the tribes would  
13 have sovereign immunity so that they would not be subject to  
14 those actions.

15 Q. And paragraph 6, sir. What was that recommendation?

16 A. There was a recommendation that each of the tribal  
17 corporations keep the appearance that it is actually engaged in  
18 lending.

19 As I recall, after reading this, there was a tribal  
20 entity that Mr. Tucker either had an agreement with or was  
21 contemplating an agreement with, which was a tribally-owned  
22 Veteran's association, and it appeared to me that would not be  
23 the type of entity that would typically lend money.

24 Q. This reference is not to the Modoc or the Miami, or is it?

25 A. No, it is not.

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1 Q. And paragraph 7.

2 A. Yeah. I recommended that the agreements eliminate  
3 references to off reservation conduct.

4 Q. Why was that, sir?

5 A. Again, because the more conduct that occurs on reservation,  
6 the stronger argument you have for the application of tribal  
7 law and regulation.

8 Q. What was your concluding remarks to Mr. Tucker?

9 A. I state in the letter, "I recommend that UMS consider  
10 amending its agreements with its tribal entities to incorporate  
11 the suggestions above. I am available at your convenience to  
12 discuss accomplishing this task."

13 Q. After you wrote this letter in 2004, for how many years did  
14 you advise Mr. Tucker on the tribal lending model?

15 A. I had ongoing conversations with Mr. Tucker about the  
16 tribal lending model directly until at least 2008 and  
17 indirectly through his legal counsel thereafter.

18 Q. Who are you referring to as his legal counsel?

19 A. That would have been Tim Muir.

20 Q. With what frequency did you have contact with Mr. Tucker in  
21 advising him in regard to his lending activities during that  
22 period of time?

23 MR. SCOTTEN: Objection.

24 THE COURT: Sustained.

25 MR. ROTH: You can take that down, Eli.

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1 Q. Did you come to represent the Santee Nation? You already  
2 testified to that.

3 For how long did you represent the Santee Nation?

4 A. I still represent them to this day.

5 Q. In what type of matters do you represent the Santee Nation  
6 today?

7 MR. SCOTTEN: Objection. Relevance.

8 THE COURT: No. I will allow it.

9 A. I represent them in various matters, both on a day-to-day  
10 basis in general counseling, assistance with preparation of  
11 tribal resolutions, to financing of their casino, to litigation  
12 of employee claims, to the lending company that it still  
13 operates.

14 Q. What type of lending company do they still operate?

15 A. They continue to operate -- SFS is a tribally-owned company  
16 that continues to issue loans online to consumers.

17 MR. SCOTTEN: Objection. Relevance. 2017.

18 THE COURT: Sustained. Stricken.

19 Q. What if any relationship do you have with the Modoc nation?

20 THE COURT: At what point in time?

21 Q. Did you form a relationship with the Modoc nation of legal  
22 representation?

23 A. Yes, I did.

24 Q. When was that, sir?

25 A. I can't recall an exact date, but I believe it would have

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1     been likely in 2005 or 2006, in that neighborhood.

2     Q.   Did you give any advice to Mr. Tucker regarding his  
3     relationship with the Modoc nation?

4     A.   Yes.

5             THE COURT:   At what point in time?

6     A.   It would have been with regard to the previous exhibit,  
7     beginning in June of 2004, your Honor.

8             THE COURT:   Go ahead.

9     Q.   Was it similar advice, if you will -- withdrawn.

10            What type of advice did you give him in regard to his  
11   relationship with the Modoc nation at that time?

12           MR. SCOTTEN:   Object.   Can we fix a end date, your  
13   Honor?

14           THE COURT:   When were these conversations?

15           THE WITNESS:   I would have had ongoing conversations,  
16   your Honor.

17           THE COURT:   I will allow it up to June of 2004.

18           Ladies and gentlemen, there is a question for you to  
19   decide, when the activity was first embarked on by Mr. Tucker,  
20   if you find it was embarked on by Mr. Tucker, the tribal  
21   relationships relating to payday loans.   And that's a question  
22   for you to decide.   The parties are not in absolute agreement  
23   on the starting date of that, but the starting date becomes  
24   relevant because the advice of counsel defense requires that  
25   you get the advice before you embark on a course of action.

1           So I am taking this testimony now subject to your  
2           consideration of when the course of action was embarked on, if  
3           you find that it was embarked on at all.

4           Go on, Mr. Roth.

5           BY MR. ROTH:

6           Q. Do you recall what the last question was, sir?

7           A. I do not.

8           THE COURT: You're going to confine your answer,  
9           though, to conversations you had prior to and end in June of  
10          2004.

11          MR. ROTH: Prior to and end?

12          THE COURT: Up to and including June of 2004.

13          Why don't you put a new question to the witness.

14          MR. ROTH: Very good.

15          BY MR. ROTH:

16          Q. Did there come a time, sir, when you proposed to the Miami  
17          tribe an alteration in their business structure?

18          A. Yes.

19          Q. Do you recall what that was or when that was, sir?

20          A. Yes. I believe that was in the middle of 2008, when that  
21          actually took place. The discussions probably began in early  
22          2008, would be my best educated guess.

23          Q. Did you have discussions with Mr. Muir in that regard?

24          A. Yes.

25          Q. And Mr. Tucker?

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1 A. Yes.

2 Q. Did you lay out potential alternative business structures  
3 for the tribal lending model?

4 A. Yes.

5 MR. ROTH: I would ask that the witness be shown  
6 Defendants' 1442.

7 Q. I ask you whether you recognize that, sir?

8 A. Can I have the second page of the exhibit, please?

9 Q. Certainly.

10 A. Yes, I recognize that.

11 Q. What do you recognize that to be, starting with the first  
12 page, sir?

13 A. The first page is an e-mail from myself to Scott Tucker,  
14 Tim Muir, and copying my partner Lance Morgan.

15 Q. The second page, sir?

16 A. It is the first page of a memorandum that was authored by  
17 myself and my partner Lance Morgan to Scott Tucker and  
18 Mr. Muir.

19 MR. ROTH: I would move it in at this time.

20 THE COURT: Any objection?

21 MR. SCOTTEN: Yes, your Honor. It's legal advice from  
22 2006.

23 THE COURT: Sustained.

24 MR. ROTH: Your Honor, on the basis that we made at  
25 the sidebar with regard to the corporate structures that were

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1 being proposed as direct rebuttal to the prosecution case, as  
2 to the nature of the organizations.

3 THE COURT: Response.

4 MR. SCOTTEN: I will try not to speak to this too  
5 extensively.

6 The charged conduct has already indisputably began.  
7 The advice on how to make it more defensible during ongoing  
8 litigation, which this is, is not admissible for that basis,  
9 and the mere --

10 THE COURT: Let me see the rest of the memo. Do you  
11 have a copy for me?

12 MR. ROTH: Yes, your Honor.

13 THE COURT: Sustained.

14 Q. Who is the point of contact that you had with the Miami  
15 nation, sir?

16 A. At what point in time?

17 Q. From the beginning of your contact with them to the very  
18 end.

19 A. In the beginning it would have been Don Brady and Ken  
20 Bellmard.

21 Q. And Ken Bellmard is who?

22 A. He was the general legal counsel for the Miami Tribe of  
23 Oklahoma.

24 Q. During the period of time that you had the relationship  
25 with the Miamis, how frequently did you speak to Don Brady?

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1 A. Well, it varied over time and depending upon what was going  
2 on. Sometimes it was daily, at other times it would have been  
3 maybe once a week or once every couple of weeks. We frequently  
4 had discussions either by phone or e-mail.

5 Q. Did you ever meet with him personally?

6 A. Yes.

7 Q. At the tribe?

8 A. Yes.

9 Q. During this period of time that you represented him over  
10 the course of these years, how many times would you say you  
11 went to the Miami tribe?

12 A. Gosh, between 20 and 30 times probably.

13 Q. Did you ever meet with him in Kansas City?

14 A. Yes.

15 Q. In Overland?

16 A. Yes.

17 Q. Did you attend board meetings with him?

18 A. Yes.

19 MR. SCOTTEN: Objection. Relevance.

20 MR. ROTH: Judge, there's affidavits from Mr. Brady  
21 that the government has introduced.

22 MR. SCOTTEN: If that's where it's going, then  
23 withdrawn.

24 THE COURT: Go ahead.

25 Q. Did you attend board meetings with Mr. Brady over the

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1 course of this period of time?

2 A. Yes, on occasion.

3 Q. What type of board meetings did you attend with him?

4 A. They would have been meetings of the business committee of  
5 the Miami tribe, which was the governing body of the tribe,  
6 which he would attend. Also, meetings of the board of Miami  
7 Nation Enterprises, which was the lending company that was  
8 owned by the tribe, and AMG Services, which began sometime  
9 after -- during 2008.

10 Q. Did you have a role in the creation of AMG Services, your  
11 firm?

12 A. Yes.

13 Q. What was that role?

14 A. We advised the tribe on that transaction and drafted the  
15 documents to accomplish that transaction.

16 MR. SCOTTEN: I renew my objection to relevance. The  
17 affidavits I thought is where it was going.

18 THE COURT: Get to the affidavits if you want to get  
19 to that.

20 MR. ROTH: Thank you, your Honor.

21 Q. I will just go through a few more points with the other  
22 tribes.

23 Regarding the Modocs, who did you interact with with  
24 the Modocs as a point of contact during your period of  
25 representation?

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1 A. Troy Little Axe.

2 Q. Do you know if he held any other titles or held any  
3 degrees?

4 A. Yes. Troy was an attorney and general counsel for the  
5 Modoc Tribe of Oklahoma.

6 Q. Is he still?

7 A. Yes.

8 MR. SCOTTEN: Objection. Relevance.

9 THE COURT: Sustained. Stricken.

10 Q. In the Santee Nation, during the period of time that you  
11 represented the Santee Nation, who was your point of contact  
12 there?

13 A. Most frequently it would have been Mr. Lee Ickes.

14 Q. What was his title?

15 A. He was originally the business manager for the tribe when I  
16 first met him. Over time his title changed. I believe his  
17 title is president of SFS, which was the tribe's lending  
18 company.

19 Q. Had you visited the tribe and Mr. Ickes on occasion during  
20 the period of your representation?

21 A. Yes.

22 Q. Approximately how many times?

23 A. It would have been more frequently than the Miami and Modoc  
24 tribes because we represented the Santee Sioux as general  
25 counsel. So I would say probably on average five or six times

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1 a year, perhaps more often.

2 Q. At a certain point, did you get involved in some litigation  
3 regarding the tribes in Colorado?

4 A. Yes, with regard to the Miami tribe and the Santee Sioux  
5 tribe.

6 Q. What was your role in that litigation, sir?

7 A. I was engaged by the Miami tribe and the Santee Sioux tribe  
8 to represent their tribal lending companies, which would have  
9 been MNE and SFS.

10 Q. What was the nature of that action?

11 A. The State of Colorado or one of its agencies had issued  
12 administrative subpoenas to, I believe it was One Click Cash.  
13 It was in the name of trade names utilized by the tribal  
14 lending companies.

15 Q. When did that litigation start, sir?

16 A. My recollection is that we entered our appearance in that  
17 litigation in July of 2005.

18 Q. Was that a test case or the first case of such an action?

19 MR. SCOTTEN: Objection.

20 A. To my knowledge --

21 THE COURT: Sustained.

22 Q. Was any criminal activity, conduct alleged?

23 THE COURT: Sustained.

24 Q. What other attorneys from your firm were involved in that  
25 litigation?

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1 MR. SCOTTEN: Objection.

2 THE COURT: Sustained.

3 MR. ROTH: Your Honor, it has to do with the  
4 affidavits.

5 THE COURT: Get to the affidavits and then you can  
6 reask the question and I will allow it. But asking in the  
7 abstract, you haven't laid a foundation yet for its relevance.

8 MR. ROTH: Very good, your Honor.

9 Q. Could you describe the findings in the Colorado litigation?

10 MR. SCOTTEN: Objection.

11 THE COURT: Mr. Scotten, I would advise you to modify  
12 your tone of voice.

13 MR. SCOTTEN: Yes, your Honor.

14 MR. ROTH: The reason I am asking this, your Honor, is  
15 because affidavits were submitted at different periods of time  
16 with regard to different stages of the litigation. So it's  
17 relevant for the purposes of the affidavits.

18 THE COURT: Sustained.

19 Q. Sir, how long did the litigation go on?

20 THE COURT: Mr. Roth, I would advise you to ask  
21 questions for which you have a good faith basis that the  
22 question leads to admissible evidence.

23 MR. ROTH: Very well, your Honor.

24 Q. Did you draft certain affidavits by, among other people,  
25 Don Brady to be submitted in conjunction with the Colorado

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1 litigation?

2 A. Yes. It would have been either myself or someone under my  
3 guidance.

4 Q. Could you tell us, sir, when you talk to under your  
5 guidance, what do you mean by that?

6 A. It would have been another attorney working on the case  
7 that was on the team who I supervised.

8 Q. What attorneys were on your team that you supervised?

9 A. At the time, when the litigation, when we entered our  
10 appearance and the original declarations were filed?

11 Q. Yes.

12 A. That would have been of course myself, Shilee Mullin,  
13 Joseph Messineo, Ben Fenner, and perhaps Jennifer Bliss.

14 Q. Were you the point person for that litigation, sir?

15 A. Yes.

16 Q. What was the process that you used in respect to Mr. Brady  
17 in obtaining affidavits from him?

18 A. Generally, we would have a conversation, or one of the  
19 attorneys would have a conversation with Mr. Brady about the  
20 contents of the affidavit. After that conversation, a draft  
21 would be prepared. The draft would be sent to Mr. Brady,  
22 either by fax or by e-mail, for his review. Mr. Brady would  
23 review and then if he had any edits or revisions or additional  
24 information that needed to be supplied -- sometimes we would  
25 send blanks that needed to be filled in -- he would make those

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1 edits. He would send them back to one of the attorneys in our  
2 firm and those changes and edits would be made to the affidavit  
3 and it would be resent to Mr. Brady. And if he had further  
4 edits, he would send them back. If he had no further edits,  
5 then he would sign the affidavit and send it back to us.

6 THE COURT: Now what you just described, is that your  
7 process of how you, in the course of your practice, prepare  
8 affidavits and have them executed?

9 THE WITNESS: It is, your Honor.

10 THE COURT: The question is, do you recall whether  
11 this happened in the case of Mr. Brady?

12 THE WITNESS: I do have specific recollections of --

13 THE COURT: Speak into the microphone.

14 THE WITNESS: I do have a specific recollection of Mr.  
15 Brady making edits to affidavits, or calling to make changes to  
16 draft affidavits.

17 THE COURT: Thank you.

18 MR. ROTH: Thank you.

19 I ask that the witness be shown D345.

20 Q. And ask if you can identify that document. Read that to  
21 yourself.

22 A. Yes, I recognize it.

23 Q. What do you recognize it to be, sir?

24 A. That's an e-mail from me to Mr. Brady.

25 MR. ROTH: I offer that into evidence at this point,

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1 your Honor.

2 THE COURT: Any objection?

3 MR. SCOTTEN: Relevance and hearsay.

4 MR. ROTH: I can establish it's a business record,  
5 your Honor.

6 THE COURT: First of all, who are you acting as  
7 counsel for at this point in time, Mr. Schulte?

8 THE WITNESS: At this point in time, I was counsel to  
9 the Miami Nation Enterprises in ongoing litigation.

10 THE COURT: Were you counsel to anyone else?

11 THE WITNESS: In 2009, yes, I was counsel to the  
12 Santee Sioux Nation and the Modoc Tribe of Oklahoma.

13 THE COURT: Were you counsel to Mr. Tucker?

14 THE WITNESS: At this point in time, I don't believe  
15 that I was counsel to Mr. Tucker's company. I believe he was  
16 separately represented.

17 THE COURT: Whether he was separately represented or  
18 not, were you still his lawyer?

19 THE WITNESS: I did not consider our firm to be his  
20 lawyer at this particular point in time.

21 THE COURT: When did you cease to be Mr. Tucker's  
22 lawyer?

23 THE WITNESS: I don't recall an exact date, your  
24 Honor. I believe it would have been sometime at the end of  
25 2007 or beginning of 2008.

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1 THE COURT: Did Mr. Tucker pay any of your fees after  
2 that date?

3 THE WITNESS: He did not.

4 BY MR. ROTH:

5 Q. Did you have a joint representation agreement in place at  
6 that time with Mr. Tucker's lawyers?

7 A. Yes.

8 MR. ROTH: Your Honor, I am offering this in respect  
9 to the affidavit, the way it was prepared, not for legal advice  
10 to Mr. Tucker, to show the review process that he did with Mr.  
11 Brady in the affidavits that the government has introduced.  
12 Specifically the last sentence, your Honor.

13 THE COURT: I am going to allow it. It's received.

14 (Defendant's Exhibit D345 received in evidence)

15 MR. ROTH: Can you highlight the last sentence of that  
16 first paragraph.

17 BY MR. ROTH:

18 Q. Can you read that, sir?

19 A. It says, "Please review the attached and if it meets your  
20 approval, sign and e-mail/fax the signed declaration and  
21 overnight the original to me."

22 Q. Is that the procedure that you used, sir, with him in  
23 regard to obtaining affidavits?

24 A. That's typical of the language that we would use, yes.

25 MR. ROTH: You can take that down, Eli.

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1 Q. I would ask that Mr. Conly Schulte be shown Defendants'  
2 D346, please, and ask you whether you recognize that document.

3 A. Yes, I do.

4 Q. What do you recognize it to be?

5 A. It's an e-mail to me -- I'm sorry, from me to Don Brady.

6 Q. What is the subject line?

7 A. It's a May 7, '09 declaration of Brady in support of motion  
8 to quash.

9 MR. ROTH: I would move that in, your Honor. D346.

10 THE COURT: Any objection?

11 MR. SCOTTEN: No new objections, your Honor.

12 THE COURT: Received.

13 (Defendant's Exhibit D346 received in evidence)

14 MR. ROTH: Can you publish that, Eli. Can you  
15 highlight the body of that e-mail, sir.

16 BY MR. ROTH:

17 Q. What does that say, sir?

18 A. Would you like me to read it?

19 Q. Yes.

20 A. It says, "Don, hope all is well. Please find attached a  
21 declaration that we will need to file in conjunction with our  
22 motion to quash the latest subpoena to US Bank issued by the  
23 State of California. Please review and contact me if you would  
24 like to discuss. Otherwise, please sign and e-mail/fax the  
25 signed version to me, and overnight the original. I'm

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1 available on my cell phone today," and I wrote my cell phone  
2 number.

3 Q. Did Mr. Brady avail himself of calling you on his cell  
4 phone in regard to affidavits or reaching out to you in regard  
5 to your drafting of affidavits?

6 A. I don't know with regard to this particular one, but he  
7 would typically, I would say more often than not, contact me to  
8 discuss the affidavits.

9 Q. Did there come a time, sir, when there was some litigation  
10 in California that you were involved in?

11 A. Yes.

12 Q. Who were you representing in the course of that litigation?

13 A. I was representing Miami Nation Enterprises and SFS, which  
14 would have been the Miami and Santee Sioux lending companies.

15 Q. What if any other attorneys were involved in that?

16 A. There were, from my firm, Shilee Mullin, John Nyhan, Tim  
17 Hennessy, Joseph Messineo, and I believe John Peebles. I think  
18 he was counsel of record on the filings.

19 Q. Did you prepare certain affidavits in connection with that  
20 litigation?

21 A. Either myself or someone under my supervision would have  
22 prepared affidavits, yes.

23 Q. When you say somebody under your supervision, ultimately  
24 did any legal documents, including documents with affidavits,  
25 go out from your law office without your reviewing it?

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1 A. No. Not for this case.

2 MR. ROTH: I am going to ask that you publish, Eli,  
3 Government Exhibit 319.

4 If you can flip through the pages of that.

5 Q. What is that document, sir, that you have in front of you?

6 A. That is a declaration of Don Brady that was submitted to  
7 the Superior Court of California in a lawsuit brought by the  
8 State of California against the Miami and Santee Sioux lending  
9 companies.

10 Q. What was the purpose of Mr. Brady's affidavit that was made  
11 a part of your submission there?

12 A. It was submitted in support of a motion to dismiss on the  
13 basis of tribal sovereign immunity.

14 Q. Explain what that means, sir.

15 MR. SCOTTEN: Objection.

16 Q. Your understanding.

17 MR. SCOTTEN: It's Mr. Tucker's understanding that  
18 matters.

19 THE COURT: Yes. Sustained.

20 Q. Did you discuss this affidavit with Mr. Tucker, sir?

21 A. I don't believe I did, no.

22 Q. Did you discuss this action, this legal action, with Mr.  
23 Tucker?

24 A. I would have likely discussed it indirectly with Mr. Tucker  
25 to Mr. Muir.

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1 Q. What was Mr. Muir's relationship with Mr. Tucker at this  
2 point?

3 A. Mr. Muir was legal counsel to Mr. Tucker and some of his  
4 companies, is my understanding.

5 Q. So when you discuss legal matters, you discuss them with  
6 Mr. Muir and sometimes with Mr. Tucker, is that fair to say, in  
7 this period of time?

8 A. Yes. If I discussed it with Mr. Tucker, ordinarily  
9 Mr. Muir would have been there.

10 Q. This is a five-page document, is that correct?

11 A. You would have to flip to the last page.

12 I believe it's six pages.

13 Q. I'm sorry. Thank you for the correction.

14 MR. ROTH: Eli, if you could put up Defense 753 side  
15 by side.

16 Just for the witness, Eli.

17 Q. Do you see that in front of you now, sir?

18 A. Yes, I do.

19 Q. That page, how does it compare to 319?

20 A. Exhibit marked 753 has a file stamp on it. The other one  
21 appears to be the same document, though before it was filed  
22 with the court.

23 MR. ROTH: Eli, for the witness, can you just flip  
24 through the pages of 753. Past page 6, if there is a page past  
25 6.

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1 Q. Without counting the pages, does that document, the defense  
2 exhibit, contain more pages than are contained in 319?

3 A. Yes, it does. It contains exhibits that are referenced in  
4 the declaration that are not contained in the Government  
5 Exhibit 319.

6 Q. Do you recognize that document, sir, as a document that  
7 your firm filed?

8 A. Yes.

9 Q. And that's one of the documents that you had a hand in  
10 preparing, is that fair to say?

11 A. Yes.

12 Q. And that was filed in court, is that correct?

13 A. Yes.

14 MR. ROTH: Eli, if you can take down 319.

15 I would move in Defendants' D753 at this point, your  
16 Honor.

17 MR. SCOTTEN: Objection. Relevance. It appears to be  
18 a legal filing with a bunch of exhibits.

19 MR. ROTH: Judge, this is an affidavit that the  
20 government introduced on their case and for the doctrine of  
21 completeness, this has the exhibits to it which give meaning to  
22 the affidavit that's in question.

23 THE COURT: All right. Ladies and gentlemen, this is  
24 a good time for our lunch break, mid-day break.

25 Enjoy the continued good weather. Have a pleasant

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1 lunch.

2 Don't discuss the case among yourselves or with  
3 anyone. See you back in action for a 2:00 start.

4 (Jury exits courtroom)

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1 (Jury not present)

2 THE COURT: You may step down.

3 (Witness excused)

4 THE COURT: What is the problem with the exhibits?

5 MR. SCOTTEN: Your Honor, it appears to be a legal  
6 filing attaching a bunch of exhibits like the Constitution of  
7 the Miami tribe. I don't see how they give meaning to  
8 Mr. Brady's affidavit. The question here is the factual  
9 accuracy of his affidavit. There is no contention he lied  
10 about what the Miami Constitution says or what ordinances were  
11 passed by the Miami tribe. I think it's attempt to show, look  
12 at all of this tribal law that was submitted in this  
13 litigation, which is not relevant.

14 THE COURT: Mr. Roth.

15 MR. ROTH: That's not what the intent is to do at all.  
16 There are documents in there that speak to some of the aspects  
17 of the affidavit itself.

18 THE COURT: Give me a for instance. Tell me.

19 MR. ROTH: For instance, the responsibilities of  
20 approving loans. That's been a contention here, who has to  
21 approve the loans.

22 MR. SCOTTEN: The fact that there is an ordinance that  
23 says that, as the Court has already said, does not go to the  
24 truth. The question is whether that actually happened in fact.

25 THE COURT: These ordinances have not come into

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Schulte - Direct

1 evidence previously?

2 MR. SCOTTEN: I don't know as to these particular  
3 ordinances, your Honor.

4 THE COURT: Take a look at it over the lunch break and  
5 let me know whether any of this is already in evidence.  
6 Because if it's already in evidence, why am I wasting my time?  
7 So take a look.

8 MR. SCOTTEN: Yes, sir.

9 THE COURT: See you all at 2:00.

10 (Luncheon recess)

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## AFTERNOON SESSION

2:00 p.m.

THE COURT: Please remain standing while we bring in the jury.

MR. SCOTTEN: Your Honor, I think you were waiting for us to get back to you to rule on an evidentiary objection.

THE COURT: Yes.

MR. SCOTTEN: We looked. The four exhibits to this affidavit are not in evidence, except it's possible a portion of one exhibit is, and also, just to be clear, we're not making a custodian of records-type objection. Our objection is these are documents, like Miami constitution, the Miami board minutes, that the Court has already ruled inadmissible, and they're certainly inadmissible for the use to backstop the truth of the affidavit.

THE COURT: How do they go to the truth or falsity of the affidavit?

MR. ROTH: Specifically, your Honor, directing your attention to the second-to-last page of the ordinance of interest loans and debt of the exhibit, it specifically indicates how the loan approval process should work. This is also a document that this witness authored.

THE COURT: I'm going to allow it. They'll come in. Bring our jury in.

(Continued on next page)

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Schulte - Direct

1 (Jury present)

2 THE COURT: Welcome back, ladies and gentlemen.

3 Everybody else, please be seated.

4 I hope you got outside. By all reports, it's pretty  
5 nice out. We're back in action.

6 Mr. Roth, whenever you're ready.

7 MR. ROTH: Thank you, your Honor.

8 I offer at this time Mr. Brady's affidavit marked  
9 D753.

10 THE COURT: That's received.

11 (Defendants' Exhibit D753 received in evidence)

12 MR. ROTH: Thank you.

13 And could you take this down for a second, Eli.

14 Q. Was it your practice, Mr. Schulte, to send a copy of  
15 affidavits of Mr. Brady to his counsel as well for approval at  
16 the time you sent them to Mr. Brady?

17 A. Yes. When Mr. Bellmard was serving as counsel for the  
18 tribe, my recollection is I would have copied Mr. Bellmard on  
19 it as well.

20 MR. ROTH: I'd ask that the witness be shown D2022.

21 Q. I ask you if you recognize that document.

22 A. Yes, I do.

23 Q. What do you recognize it as, sir?

24 A. It's an email -- excuse me, from Shilee Mullin, who is an  
25 attorney working for my firm, to Ken Bellmard, and copying

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Schulte - Direct

1 myself, regarding an affidavit of Don Brady.

2 MR. ROTH: Judge, I offer 2022.

3 MR. SCOTTEN: No objection.

4 THE COURT: Received.

5 (Defendants' Exhibit 2022 received in evidence)

6 MR. ROTH: Eli, could you publish that, please, and  
7 highlight the substance of that email, after Ken.

8 Q. What does that say, sir?

9 A. It says, "Ken, here is the revised affidavit wherein I have  
10 corrected paragraph 11. If you have any questions, feel free  
11 to contact me. Thanks."

12 Q. What time is that email, sir?

13 THE COURT: Wait a minute. It's not up on the screen.

14 MR. ROTH: Oh, I'm sorry.

15 Q. What date and time is that, sir?

16 A. That is July 15, 2005, at 4:34 p.m.

17 MR. ROTH: Thank you. You can take that down, Eli.

18 I'd ask that the witness be shown 2023.

19 Q. Do you recognize that, sir?

20 A. Yes.

21 Q. And what do you recognize it to be, sir?

22 A. It's an email from Shilee Mullin to Ken Bellmard with a  
23 copy to me. The subject is the latest version of the Don Brady  
24 affidavit.

25 MR. ROTH: I would move that into evidence at this

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Schulte - Direct

1 time, your Honor.

2 MR. SCOTTEN: No objection.

3 THE COURT: Received.

4 (Defendants' Exhibit 2023 received in evidence)

5 Q. Is that on the same date?

6 A. Yes, it appears to be.

7 Q. And it's a little later in the day, does it appear to be?

8 A. Yes, it's about 30 minutes later.

9 Q. And what is the text of that document?

10 A. It says, "Ken, I made one small additional revision to  
11 paragraph 11 of Don's affidavit. Would you have him execute  
12 this version? Contact me with any questions. Thank you."

13 Q. That was an exchange back and forth with Mr. Brady and your  
14 office, your associate, and Mr. Bellmard was in the chain as  
15 well?

16 A. It was an exchange between Ms. Mullen at my office and  
17 Mr. Bellmard regarding Mr. Brady's affidavit.

18 Q. A couple change, minor edits, is that correct?

19 A. That's -- it says one small additional revision, yes.

20 MR. ROTH: Thank you. You can take that down.

21 And I'd ask that the witness be shown 2025.

22 Q. Do you recognize that document, sir?

23 A. Yes, I do.

24 Q. And who is that from and to?

25 A. It's an email from Shilee Mullin of my firm to Don Brady

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Schulte - Direct

1 and Ken Bellmard, on which I'm copied, regarding Don Brady's  
2 affidavit.

3 MR. ROTH: I'd move 2025 into evidence, your Honor.

4 MR. SCOTTEN: No objection.

5 THE COURT: Received.

6 (Defendants' Exhibit 2025 received in evidence)

7 Q. Could you read us the text in that affidavit, please?

8 A. It says, "Don, please execute the attached affidavit and  
9 overnight it today. Ken, if you have any revisions to the  
10 affidavit, please contact us on Monday morning, and we can  
11 discuss the revisions. However, we need to have an executed  
12 signature page in our possession on Monday."

13 MR. ROTH: Thank you. You can take that down, and  
14 Eli, please bring back up D753, please.

15 Q. This is the Brady affidavit that we were discussing before,  
16 sir. Did Mr. Brady swear to the truth of the contents of that  
17 affidavit?

18 A. Yes, he did.

19 Q. And sir, what other than Mr. Brady affirming to the truth  
20 of that affidavit leads you to believe it's true -- or do you  
21 believe it's true, the contents?

22 A. Yes, I do.

23 Q. Could we direct your attention to paragraph 2 of that  
24 affidavit, on page 2.

25 MR. ROTH: Could you highlight that, Eli.

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Schulte - Direct

1 Q. Can you read that?

2 A. Yes.

3 Q. Out loud.

4 A. Oh, I'm sorry. "I am employed as the chief executive  
5 officer of the Miami Nation Enterprises business management  
6 division, P.O. Box 1525, 3531 P Street NW, Miami, Oklahoma  
7 74354. In the performance of my duties as CEO of MNE, I manage  
8 the services that MNE and its entities provide as well as  
9 maintain the ultimate responsibility for its book, records and  
10 accounts. Also, I manage the day-to-day operation of MNE and  
11 am ultimately responsible for marketing, strategy and  
12 compliance with all regulations pertaining to MNE."

13 Q. Is that true, to your knowledge?

14 A. Yes, it is.

15 THE COURT: All right. I've allowed the reading  
16 there, but avoid the reading. It's up on the screen.

17 MR. ROTH: Judge, if I may just get to the paragraph  
18 in particular.

19 THE COURT: I understand, but you can display them to  
20 the jury; they don't have to be read aloud.

21 MR. ROTH: Very good.

22 Q. Could you summarize paragraph 3, sir, and tell me whether  
23 that's true, to your knowledge?

24 A. In that paragraph, Mr. Brady states that he's familiar with  
25 the operations of Miami Nation Enterprises and that it's

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Schulte - Direct

1 organized as a political and economic subdivision of the tribe  
2 and at all times acted wholly as -- I'm sorry, acted as a  
3 wholly owned subdivision of the Miami tribe.

4 Q. And did you have a role in forming MNE, your law firm?

5 A. I believe that it did.

6 Q. Do you know what that role was, to incorporate --

7 A. We would likely have drafted the organizational documents  
8 for MNE, its corporate charter and bylaws.

9 Q. And directing your attention to page 3, paragraph 8, can  
10 you read that, sir, and tell me, summarize that and tell me  
11 whether that's correct?

12 A. It says that MNE, doing business under trade names  
13 Ameriloan, US FastCash and United Cash Loans, provides  
14 short-term loans to borrowers pursuant to loan agreements, and  
15 those transactions are approved and consummated on tribal  
16 lands, of the Miami Tribe of Oklahoma.

17 Q. Is that true, sir, to your knowledge?

18 A. Yes.

19 Q. And when you had discussions with Mr. Tucker during your  
20 initial review of the service agreements, did you tell him that  
21 each and every loan had to be approved by somebody on tribal  
22 land?

23 A. Not each loan individually, no.

24 Q. What did you inform him were the requirements for loan  
25 approval?

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Schulte - Direct

1 A. That the tribe needed to approve the terms and conditions  
2 of the loans and the terms and conditions on which the loans  
3 would be approved, or would be -- the money would be lent, I  
4 should say.

5 Q. To your knowledge, was Mr. Brady familiar with the terms  
6 and conditions of the loans?

7 A. Yes, to my knowledge.

8 Q. And what is that knowledge based on, sir?

9 A. I attended several meetings between Mr. Brady and  
10 Mr. Tucker.

11 THE COURT: In what time period?

12 THE WITNESS: That would have been beginning in 2004,  
13 your Honor.

14 THE COURT: All right. And when you say beginning in  
15 2004, when were the other meetings? How many meetings were  
16 there; when were they?

17 THE WITNESS: There would have been numerous meetings  
18 periodically beginning in, I would say middle to late 2004, all  
19 the way up until post-2012.

20 THE COURT: All right. Next question.

21 BY MR. ROTH:

22 Q. Paragraph 11 on page 4, sir --

23 MR. ROTH: Could you highlight that, Eli.

24 Q. -- could you summarize what that says in terms of the  
25 profits?

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Schulte - Direct

1 A. It says a hundred percent of the profits generated from MNE  
2 are reinvested in economic and governmental purposes of the  
3 tribe and used for various tribal governmental purposes,  
4 including services to its members, law enforcement, poverty  
5 assistance, housing, nutrition, preschool, elder care programs,  
6 school supplies and scholarships.

7 Q. And what was your understanding, sir, of what 100 percent  
8 of the profits generated by MNE meant in that paragraph?

9 A. It meant all of the moneys paid to MNE or that MNE derived  
10 from the lending business.

11 Q. And what were the terms of the revenue split between the  
12 servicers and the tribes?

13 A. MNE --

14 Q. Servicers.

15 A. Pursuant to the service agreements, MNE received 1 percent  
16 of the gross collected revenues monthly.

17 Q. Did you finish your answer? I'm sorry.

18 A. I was going to say that that 100 percent refers to the 1  
19 percent of the gross collected revenues that MNE itself would  
20 receive.

21 Q. Thank you.

22 Directing your attention to paragraph 13 on that page, what  
23 does that indicate, sir?

24 A. It states that as a tribally owned and operated entity, MNE  
25 enjoys sovereign immunity from suit.

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Schulte - Direct

1 Q. Thank you.

2 And that affidavit --

3 MR. ROTH: Go back to the front page, Eli. Thank you.

4 Q. -- there were at least three lawyers that submitted that  
5 affidavit, is that correct?

6 MR. SCOTTEN: Objection. Relevance.

7 THE COURT: Yes. Sustained.

8 MR. ROTH: I'll move on.

9 Q. There was some litigation in West Virginia, is that  
10 correct, sir?

11 A. Excuse me. Yes, I do recall that.

12 Q. And what was the nature of that litigation?

13 A. I believe that the, or my recollection is that the state of  
14 West Virginia brought suit against a number of online lenders,  
15 alleging that the lenders needed to be licensed in the state of  
16 West Virginia.

17 Q. And what was your role in that lawsuit?

18 A. I represented the Modoc, Santee and Miami tribes in that  
19 litigation, because they were named defendants.

20 Q. And in connection with the court pleadings or papers that  
21 he submitted, did you submit an affidavit on behalf of Troy  
22 Little Axe?

23 A. Yes, I recall that we did.

24 MR. ROTH: I'd ask that the witness be shown  
25 Government Exhibit 824. And if you could flip through, that's

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Schulte - Direct

1     only six pages, Eli.

2     Q.   Do you recognize that, sir?

3     A.   Yes, I do.

4     Q.   And is that an affidavit that you submitted on behalf of  
5     Troy in combination with the court pleadings in that matter?

6     A.   Yes, it is.

7             MR. ROTH:   I'd move that into evidence, your Honor.

8             MR. SCOTTEN:  I think it's in evidence, your Honor.

9             MR. ROTH:   Oh, I'm sorry.  It's a government exhibit.  
10    I apologize.

11    Q.   Turning, sir, to the second page, paragraph 2, could you  
12    summarize that and what that says in that paragraph?

13    A.   Troy says that he's employed as the director of MTE  
14    services, and in performing his duties, he manages the services  
15    that MTE provides and maintains the ultimate responsibility for  
16    its books, records and accounts and oversees the day-to-day  
17    management of MTE.

18    Q.   And what services do they provide?

19    A.   MTE was a tribal lender.  It made loans over the Internet  
20    to consumers.

21    Q.   And did you create MTE?

22    A.   I don't recall if MTE was already created by the time we  
23    were retained or if our firm formed it.

24    Q.   Fair enough.  Did you tell Mr. Tucker that the tribe had to  
25    actually manage day-to-day operations?

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Schulte - Direct

1 A. The tribe needed to manage the day-to-day operations of the  
2 tribal entity.

3 MR. SCOTTEN: Objection. Advice to Mr. Little Axe.

4 THE COURT: Sustained.

5 MR. ROTH: I'm sorry. I didn't hear the objection.

6 MR. SCOTTEN: My objection was that it's advice to  
7 Mr. Little Axe, which is irrelevant.

8 THE COURT: Sustained.

9 BY MR. ROTH:

10 Q. When you spoke to Mr. Tucker with your initial review of  
11 the service agreements, did you indicate to him that as part of  
12 the service agreement, the tribes had to manage the day-to-day  
13 management of the lending operation?

14 THE COURT: Fix a point in time.

15 Q. In 2004, when you did your initial review.

16 A. Can you clarify what you mean by the lending operation?

17 Q. Well, there were roles that the servicers played under the  
18 lending operation, is that correct?

19 A. That is correct.

20 Q. And there were roles that the tribe played, is that  
21 correct?

22 A. That is correct.

23 Q. And if the tribe had the final say in how the operation  
24 runs, was that OK and did you tell that to Mr. Tucker?

25 THE COURT: Whoa. Avoid leading.

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Schulte - Direct

1 MR. ROTH: I'm sorry.

2 Q. What did you tell Mr. Tucker in respect to the authority  
3 that the tribe had to exercise over the lending operation in  
4 2004?

5 A. My recollection is that I would have advised Mr. Tucker  
6 that the tribe had to be the lender and let -- be the entity  
7 that actually loaned the money. The tribe had to own and  
8 control the lender. That's distinct from the servicer that --  
9 that was -- Mr. Tucker's company was the servicer.

10 Q. Directing your attention to the eighth paragraph on page 3,  
11 paragraph 8 on page 3, is that a true statement, to your  
12 knowledge?

13 A. Yes, to my knowledge, that is true.

14 Q. And paragraph 9, is that a true statement, to your  
15 knowledge, on page 3?

16 A. Yes, it is.

17 Q. And paragraph 10, is that a true statement?

18 A. Yes, to my knowledge, that is a true statement.

19 Q. And this exhibit does not have the attachments, but some of  
20 the attachments that are referenced there, are those exhibits  
21 documents that you created, some of them?

22 A. I believe so. I believe that they are. I know that the  
23 interest loan and debt act was a document that our firm drafted  
24 for sure, and given the dates of those resolutions, I believe  
25 that our firm likely drafted those documents.

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Schulte - Direct

1 Q. And you considered those documents when this affidavit was  
2 drawn, is that fair to say?

3 A. Yes.

4 Q. And Mr. Little Axe is an attorney, is that correct?

5 A. Correct.

6 Q. Did there come a time, sir --

7 MR. ROTH: You can take that down, Eli. Thank you.

8 Q. -- when Mr. Tucker sued AMG?

9 A. Yes.

10 Q. And what was the nature of that lawsuit?

11 THE COURT: Fix a point in time, if you will, sir.

12 THE WITNESS: Yes. That was, I believe, in July of  
13 2010.

14 Q. And what was the nature of the lawsuit, sir?

15 A. The suit was a --

16 THE WITNESS: Can I give a little background?

17 THE COURT: First of all, did you act as counsel for  
18 Mr. Tucker in that suit?

19 THE WITNESS: No. I acted as counsel for AMG  
20 Services, your Honor.

21 THE COURT: All right. You were counsel for AMG  
22 Services in that suit?

23 THE WITNESS: I was counsel for AMG Services.

24 THE COURT: Put your next question to the witness.

25 BY MR. ROTH:

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Schulte - Direct

1 Q. And did you consult Mr. Muir in connection with that suit?

2 A. I did discuss it with him, yes.

3 Q. Before the lawsuit was filed?

4 A. Yes.

5 Q. And after the lawsuit was filed, is that correct?

6 A. Yes.

7 Q. And what was the nature of that lawsuit, sir?

8 A. At the time AMG was involved in a class action lawsuit in  
9 the state of California. The plaintiffs' attorney in that  
10 lawsuit attempt -- named CLK Management as a defendant in the  
11 lawsuit. At the time CLK had been merged into AMG through a  
12 merger transaction that had previously occurred, and so our  
13 position as counsel for AMG was that CLK was no longer a legal  
14 entity because it had merged into AMG. That merger had taken  
15 place under tribal law, pursuant to the tribe's corporation's  
16 code. We were concerned, and the plaintiffs' counsel argued to  
17 the Court that it should not recognize that merger transaction  
18 because it was not accomplished under Kansas law, and CLK had  
19 been a Kansas corporation.

20 And so, one way to resolve that dilemma was to --

21 THE COURT: The question was, what was the nature of  
22 the lawsuit?

23 THE WITNESS: Right.

24 THE COURT: That's the question you're answering. OK?

25 THE WITNESS: Yes.

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Schulte - Direct

1 THE COURT: And the lawsuit was not the California  
2 lawsuit.

3 THE WITNESS: Correct.

4 THE COURT: So please answer the question.

5 A. So the nature of the lawsuit was a suit to force AMG to  
6 register the merger transaction with the secretary of state of  
7 Kansas so that it would be recognized as a matter of Kansas  
8 State law.

9 Q. And did the tribe agree to participate in that lawsuit?

10 A. No, it did not.

11 Q. And did you inform the tribe that it would not -- what the  
12 position is? Did you keep them informed?

13 MR. SCOTTEN: Objection. Relevance.

14 THE COURT: Yes. Sustained.

15 MR. ROTH: Judge, without a speaking objection, the  
16 government has said that this lawsuit was contrived.

17 THE COURT: Yes.

18 MR. ROTH: And a sham. That's why I tried to get into  
19 the history before of the merger of CLK and AMG as a predicate.

20 THE COURT: Yes. OK. I only ruled on one question.

21 BY MR. ROTH:

22 Q. Did you write a letter to plaintiffs' counsel indicating,  
23 sir, that the Miami tribe would not consent to jurisdiction?

24 A. I believe that I did write a letter saying that the tribe  
25 and AMG Services would not consent to jurisdiction of the state

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Schulte - Direct

1 of Kansas or appear in that lawsuit.

2 MR. ROTH: Could the witness see Government Exhibit  
3 2612, and it can be published.

4 Q. Is that the letter that you wrote, sir?

5 A. Yes, it is.

6 Q. And can you summarize that letter for us, without reading  
7 the whole thing?

8 A. Sure. It is a letter to Mr. Smith, who represented  
9 Mr. Tucker, saying that AMG Services is a wholly owned and  
10 controlled entity of the Miami Tribe of Oklahoma, and as such,  
11 it's entitled to sovereign immunity and would not appear in  
12 that suit because to do so would, or could be interpreted as a  
13 consent to the jurisdiction of the state of Kansas and  
14 potentially a waiver of that sovereign immunity.

15 MR. ROTH: Thank you. You can take that down.

16 MR. SCOTTEN: Your Honor, this was not originally  
17 offered for the truth. To the extent it's now being used for  
18 the truth, I don't think it should be admitted on that basis.

19 THE COURT: And I don't think it is.

20 MR. ROTH: No. It's just a letter he wrote.

21 THE COURT: I have it. Next question, please.

22 BY MR. ROTH:

23 Q. Mr. Schulte, in the course of your representation with the  
24 tribe, did you brief the tribe on legal matters when you  
25 appeared in front of them?

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Schulte - Direct

1 MR. SCOTTEN: Objection.

2 THE COURT: Sustained.

3 MR. ROTH: I have one document, Judge, I'd like to  
4 show the witness, once I lay a foundation.

5 THE COURT: Show him the document, but the question  
6 you just asked I sustained an objection to. You can show him a  
7 document.

8 MR. ROTH: Could you publish just for the witness  
9 D367, Eli. Thank you.

10 Q. Mr. Schulte, do you recognize that document?

11 MR. ROTH: And you can flip through the pages, Eli.

12 A. Yes, I do.

13 Q. And what do you recognize it to be, sir?

14 A. It is a cover letter accompanying a legal invoice to AMG  
15 Services. It's a letter to Don Brady.

16 MR. ROTH: Judge, I'd move that into evidence at this  
17 point and establish it as a business record.

18 THE COURT: Any objection?

19 MR. SCOTTEN: On relevance, not authenticity, your  
20 Honor.

21 THE COURT: All right. Received.

22 (Defendants' Exhibit 367 received in evidence)

23 MR. ROTH: You can publish that. Thank you, Eli.

24 Q. Was it your regular practice when you submitted monthly  
25 invoices to Don Brady and the tribe to keep them informed of

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Schulte - Direct

1 legal actions?

2 A. Yes, it was.

3 Q. And directing your attention to the last paragraph, or the  
4 second-to-last paragraph --

5 MR. ROTH: That's it, Eli. Thank you.

6 Q. -- in essence, were you informing them in that paragraph of  
7 the nature of the lawsuit you just testified about?

8 A. Yes.

9 MR. ROTH: You can take that down. Thank you.

10 Q. You indicated, sir, that on more than one occasion you  
11 attended board meetings of AMG. Is that correct?

12 A. Yes.

13 Q. And do you recall who the recording secretary of the AMG  
14 board was in 2011 or 2012?

15 A. I believe it was Carolyn Williams.

16 Q. What's that belief based on, sir?

17 A. Well, she was present for some of the meetings during that  
18 time, as I recall.

19 Q. And some of those meetings were recorded and some of them  
20 were not, is that correct?

21 A. That's --

22 Q. If you know.

23 A. I know that she recorded some meetings. I don't know that  
24 she recorded all of them. And when I say record, I mean audio  
25 recording.

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Schulte - Direct

1 Q. Sir, were there occasions when the board minutes were sent  
2 to you for your approval?

3 A. Yes. That's not unusual.

4 Q. And how often did that happen, sir?

5 A. I guess, depending upon -- you're talking about the Miami  
6 tribe. It wouldn't happen for every board meeting, but I would  
7 say it was not uncommon. Several times a year, perhaps.

8 Q. And minutes were sent for your approval of board meetings,  
9 some that you were not in attendance for?

10 A. That would happen on occasion, yes.

11 Q. Do you recall, sir --

12 MR. ROTH: If we could put up in front of Mr. Schulte  
13 Government Exhibit 401, and if you could highlight the second  
14 header in the middle of the page there.

15 Q. The caption of that is minutes of February 1, 2012, AMG  
16 board meetings, is that correct?

17 A. Correct.

18 Q. And what does the body of that say?

19 A. It says, "Don asked me to follow up to see if you have any  
20 comments regarding the draft of minutes of the February 1,  
21 2012, AMG board meeting emailed to you on February 7."

22 Q. And did they attach the actual board minutes to that email?

23 A. Can you close the --

24 MR. ROTH: Can you close the box, Eli.

25 A. I believe so. Yes, it appears that they were attached to

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Schulte - Direct

1 the email. The prior email. Sorry.

2 Q. This is a string of emails, but do you see some edits on  
3 the third page, in paragraph Roman V?

4 A. I do.

5 MR. ROTH: Now, jumping back, Eli, if you will, to  
6 page 1.

7 Q. That first email was from Mr. Muir to Carolyn Williams, and  
8 it's his suggestions for edits, is that correct?

9 A. Yes.

10 MR. ROTH: You can take that down, Eli, now.

11 Could you show the witness 402 and the jury as well.

12 Q. And the top part indicates this was an email from you to  
13 Tim and Brady, Don Brady, concerning those minutes, is that  
14 correct?

15 A. Correct.

16 Q. And the body says "my suggested edits," is that correct?

17 A. That is correct.

18 Q. And if we turn to the third page, same Roman V, are those  
19 the edits that you made, sir, the proposed edits?

20 A. Yes.

21 Q. And could you tell the members of the jury why you made  
22 those proposed edits?

23 MR. SCOTTEN: Objection.

24 THE COURT: Sustained.

25 Q. What was your understanding, sir, of the nature --

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1 withdrawn.

2 Were you involved in the negotiations between AMG and  
3 Mr. Tucker regarding the acquisition of proprietary software  
4 and other intellectual properties?

5 A. Yes.

6 Q. And you were knowledgeable about the scope and the nature  
7 of those negotiations, is that correct?

8 A. Correct.

9 Q. And did you make these proposed edits based on your  
10 understanding of the nature of that transaction?

11 A. Yes.

12 Q. To your knowledge, Carolyn Williams, who was the recording  
13 secretary, did she have any law degree?

14 A. Not to my knowledge.

15 MR. SCOTTEN: Objection.

16 THE COURT: Overruled.

17 MR. ROTH: You can take that down, Eli.

18 Q. Did you represent the tribes in some FTC litigation, sir?

19 A. Yes, I did.

20 Q. And what was the nature, without going into all the detail,  
21 of that litigation?

22 A. That was a suit brought by the Federal Trade Commission  
23 against a number of entities, including the tribal lending  
24 entities of the Miami tribe, the Modoc tribe and the Santee  
25 Sioux Nation, alleging violation -- that the loan documents

Ha4Wtuc4

Schulte - Direct

1 violated the Truth In Lending Act and the FTC Act, and that was  
2 the general nature of it.

3 Q. And did you ultimately reach a settlement in 2013 with the  
4 FTC to change the loan policies?

5 MR. SCOTTEN: Objection.

6 THE COURT: One second, please.

7 Restate your question, please.

8 Q. You represented the tribes in that litigation, you  
9 indicated, is that right?

10 A. I represented the Modoc tribe and the Santee Sioux Nation.  
11 And originally I also represented the Miami tribe, but at some  
12 point in that litigation, they retained separate counsel.

13 Q. In 2013, sir, did you, on behalf of the defendants, enter  
14 into a consent decree to modify the loan renewal policy?

15 MR. SCOTTEN: Objection.

16 THE COURT: Sustained.

17 Mr. Roth, you may recall the discussion we had on this  
18 prior to trial.

19 MR. ROTH: I thought the date was within the --

20 THE COURT: Prior to trial. Unless you want to open  
21 the door here.

22 MR. ROTH: No.

23 THE COURT: You can open the door. It's your  
24 decision.

25 MR. ROTH: I will move on, Judge.

Ha4Wtuc4

Schulte - Direct

1 Q. Did you submit an affidavit by Chief Judy Cobb in  
2 connection with the FTC litigation?

3 A. Yes, I recall that our firm did submit an affidavit of Judy  
4 Cobb in that litigation.

5 Q. And who was Judy Cobb?

6 A. She was, I believe her title was second chief, but she was  
7 a member of the business -- or, I'm sorry, the elected council  
8 of the Modoc Tribe of Oklahoma, which is its governing body.

9 MR. ROTH: I'd ask that the witness be shown  
10 Government Exhibit 832, and the jury as well.

11 Q. Is this an affidavit from Ms. Cobb that you submitted in  
12 those pleadings?

13 A. Yes, it appears to be.

14 Q. And did your office draft that?

15 A. Someone at my office would have drafted that, correct.

16 Q. There's other law firms on the front page, but if you turn  
17 to the second page, does your name appear there, and your law  
18 firm?

19 A. Yes.

20 Q. And with another attorney from your firm, Ms. Denton, is  
21 that correct?

22 A. That is correct.

23 Q. Directing your attention, sir, to page 4 of the  
24 affidavit -- I'm sorry, page 5, paragraph 10, is that a true  
25 statement, to your knowledge, sir?

Ha4Wtuc4

Schulte - Direct

1 A. Yes, it is.

2 Q. And what is the basis of your knowledge, sir, other than  
3 that she swore to it?

4 A. I had knowledge of that through discussions with Troy  
5 Little Axe and likely Mr. Muir and possibly Mr. Tucker.

6 Q. And directing your attention, sir, to paragraph 12 on page  
7 5, indicating that the profits are used exclusively for the  
8 benefit of the Modoc tribe, is that correct, sir, to your  
9 knowledge?

10 A. It is.

11 Q. And paragraph 11, that Red Cedar Services is governed by  
12 the laws of the Modoc, etc., is that true, to your knowledge?

13 A. Yes, it is.

14 Q. Is there anything false in this affidavit, to your  
15 knowledge?

16 A. Not to my knowledge.

17 MR. ROTH: I have no further questions, your Honor.

18 THE COURT: All right. Ladies and gentlemen, let's  
19 stand up and stretch for a moment. Deep breath also, please.  
20 We may have to appoint a calisthenics coordinator to get us  
21 going with the jumping jacks and everything.

22 Please be seated.

23 You may inquire.

24 MR. VELAMoor: Mr. Bath or Mr. Scotten?

25 THE COURT: I'm sorry? Mr. Bath goes next.

Ha4Wtuc4

Schulte - Direct

1 FURTHER DIRECT EXAMINATION

2 BY MR. BATH:

3 Q. Mr. Schulte, I understand that you began giving legal  
4 advice to Scott Tucker sometime in 2003?

5 MR. SCOTTEN: Objection.

6 A. That is my recollection.

7 MR. SCOTTEN: I'm sorry, your Honor. 2003 is OK. My  
8 mistake.

9 A. Yes, that is my recollection.

10 Q. You continued to give him some advice into early 2004?

11 A. Correct.

12 Q. You looked at service agreements?

13 A. Correct.

14 Q. Moving forward, as I understand it, then, the next few  
15 years, the Miami and the Modoc and the Santee established  
16 tribal corporations?

17 A. Correct.

18 Q. Passed resolutions and laws to engage in lending?

19 A. Correct.

20 Q. And you helped a lot with that?

21 A. Yes.

22 Q. What we might call tribal governance?

23 A. Yes.

24 Q. OK. And I'm going to take you now from that time to '03 to  
25 '06. Let's just take that snapshot of time.

Ha4Wtuc4

Schulte - Direct

- 1 A. OK.
- 2 Q. You had occasion to visit all these reservations?
- 3 A. Yes.
- 4 Q. And you met with people like Lee Ickes with the Santee?
- 5 A. Yes.
- 6 Q. Troy Little Axe with the Santee -- with the Modoc?
- 7 A. Yes.
- 8 Q. Don Brady and Ken Bellmard with the Miami?
- 9 A. Correct, among others.
- 10 Q. You went to and met with tribal councils?
- 11 A. Yes.
- 12 Q. And how many times in those three years did you meet with
- 13 each tribe individually? From '03 to '06, on average, how
- 14 often would you visit the Miami tribe?
- 15 A. The Miami tribe, maybe -- at Miami or anywhere?
- 16 Q. Anywhere.
- 17 A. Gosh. At least six times a year, I would say.
- 18 Q. And how many times at the reservation?
- 19 A. Maybe twice a year.
- 20 Q. And how about the Santee, same time period, '03 to '06?
- 21 A. That would have been more frequent. Probably a dozen times
- 22 a year.
- 23 Q. How many times at the tribe per year?
- 24 A. Maybe half a dozen.
- 25 Q. And they're in Nebraska?

Ha4Wtuc4

Schulte - Direct

1 A. Yes.

2 Q. And you were general counsel, your firm, for them?

3 A. Yes.

4 Q. And you're in Nebraska?

5 A. I was at the time.

6 Q. So it was a closer drive than Oklahoma?

7 A. Yes, and we represented them as general counsel, so there  
8 was many issues other than lending that we --

9 Q. '03 to '06 with the Modoc, how often would you see them?

10 A. That would have been less frequently. I would say maybe  
11 two or three times a year.

12 Q. And I've called them tribal councils for all three, but  
13 each may have a different name for the sort of governing body,  
14 is that fair to say?

15 A. Correct.

16 Q. And when you went to these meetings, did you sometimes meet  
17 with the tribal council?

18 A. Yes.

19 Q. And answered any questions they had?

20 A. Yes.

21 Q. It would be fair to say you were familiar with the tribal  
22 model of all three by 2006?

23 A. Yes, that's fair to say.

24 Q. Had any litigation begun before 2006?

25 A. Yes.

Ha4Wtuc4

Schulte - Direct

1 Q. In what state?

2 A. Colorado.

3 Q. That was civil, state regulators?

4 A. It was an attempt to enforce an administrative subpoena.

5 Q. Who did you represent in '05 in Colorado?

6 A. The Miami tribal entity, which is MNE, and the Santee Sioux  
7 lending entity, which was SFS.

8 Q. Did you ever assist the tribes in what I'm going to call  
9 getting their licenses, creating licenses?

10 A. Yes.

11 Q. I'm going to show you --

12 MR. BATH: Can we show to the witness Government  
13 Exhibit 1013.

14 Q. Do you recognize that?

15 A. Yes.

16 Q. What is that, generally?

17 A. It's an email from me to Scott Tucker, attaching a draft  
18 agreement for SFS.

19 MR. BATH: Offer 1013.

20 THE COURT: Any objection?

21 MR. SCOTTEN: Is there an attachment?

22 MR. BATH: Not to this, no. Just the one page.

23 MR. SCOTTEN: No, your Honor.

24 THE COURT: Received.

25 (Government Exhibit 1013 received in evidence)

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Schulte - Direct

1 MR. BATH: Publish that for the jury.

2 Q. First let's have the date, Mr. Schulte.

3 A. February 13, 2005.

4 Q. It is sent to Mr. Tucker, correct?

5 A. Correct.

6 Q. From Carol Thompson?

7 A. Correct. She was a legal secretary at my firm.

8 Q. This says it's a draft agreement for SFS, same agreement we  
9 prepared for Kickapoo. Do you remember which agreement that  
10 was?

11 A. I believe that would have been a service agreement with  
12 Mr. Tucker's company.

13 Q. All right.

14 MR. BATH: Can we put up for the witness only -- take  
15 that down, Eli and put up for the witness only defense 1112.

16 Q. Do you recognize that?

17 A. Yes.

18 Q. And is that a letter from you to Mr. Ickes?

19 A. It is.

20 Q. Does it look fair and accurate and complete?

21 A. It does.

22 Q. And regards SFS?

23 A. Yes.

24 MR. BATH: Offer defendants' 1112.

25 MR. SCOTTEN: Objection. The Court's prior ruling;

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Schulte - Direct

1 I'm trying not to elaborate.

2 THE COURT: I'll allow it.

3 (Defendants' Exhibit 1112 received in evidence)

4 (Continued on next page)

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HA48TUC5

Schulte - Cross

1 MR. BATH: Publish it, please.

2 Q. What is the date first, Mr. Schulte?

3 A. It's November 23rd of 2005.

4 Q. Who is it addressed to?

5 A. Lee Ickes.

6 Q. He is associated with the Santee?

7 A. Yes. He is the business manager of the Santee Sioux  
8 Nation.

9 Q. You identify a couple of documents there. A license to  
10 SFS, is that correct?

11 A. Correct.

12 Q. What does that mean, license?

13 A. Well, the tribal lending ordinance required that a  
14 tribally-owned entity be licensed by the tribe to engage in  
15 lending activity.

16 Q. Would this be an example of the kind of involvement you had  
17 from '04 to '05, before '06, for the tribes?

18 A. It would be an example, yes.

19 MR. SCOTTEN: Objection. This is between the tribes  
20 and the witness has no bearing on Mr. Tucker or Mr. Muir's  
21 state of mind.

22 THE COURT: Sustained.

23 MR. BATH: That's not what it's being offered for  
24 that. It's offered to rebut the government's evidence  
25 submitted by the government earlier in their case.

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Schulte - Cross

1 THE COURT: Why don't you rephrase it and bring it  
2 home to the point you're trying to make.

3 BY MR. BATH:

4 Q. You were involved in a licensing process, helping the  
5 tribes get licensed under tribal law?

6 A. Yes.

7 Q. This document is an example of that?

8 A. That is correct.

9 MR. SCOTTEN: Objection, your Honor. Our objection is  
10 the Court's ruling that just because a lawyer is involved does  
11 not add legitimacy. That is not rebuttal.

12 THE COURT: It will stand.

13 Go ahead.

14 Q. Sometime in 2006, did you meet Tim Muir?

15 A. Yes. I recall that it was about sometime in 2006.

16 Q. Did you initially -- did you talk to him on the phone, meet  
17 him in person?

18 Let's just talk about 2006. Mid-2006 to the end of  
19 '06, do you remember how you first either met him or talked to  
20 him?

21 A. I don't recall if it was through an introduction by phone  
22 with Mr. Tucker or through a meeting. It may have been both.

23 Q. What did you understand Mr. Muir's role was?

24 A. Mr. Muir at that time was retained to represent CLK  
25 Management.

HA48TUC5

Schulte - Cross

1 Q. Was he acting sort of like the general counsel for CLK?

2 A. I think that's an accurate description.

3 Q. Did you understand Mr. Muir had been out of law school for  
4 about a couple of years at that time?

5 A. Yes.

6 Q. My point going forward from '06 is you got to know Mr. Muir  
7 pretty well; is that fair to say?

8 A. Yes.

9 Q. You worked with him on lots of litigation?

10 A. Correct.

11 Q. The '05 litigation from Colorado was still going on?

12 A. Correct.

13 Q. Was there any other litigation at that time?

14 A. In 2006?

15 Q. Yes, sir.

16 A. There may have been. The West Virginia case may have been  
17 filed at some point in 2006. Other than that, I don't believe  
18 there was any other litigation active at that time.

19 Q. Did you have occasion to meet Mr. Muir in person in '06?

20 A. I believe so. To the best of my recollection, yes.

21 Q. Do you remember where that might have taken place?

22 A. It would have taken place at the offices of CLK Management  
23 in Kansas City, or Overland Park, Kansas.

24 Q. Is it fair to say within the first 60 to 90 days of  
25 Mr. Muir starting at CLK you would have had contact with him?

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Schulte - Cross

1 A. Yes.

2 Q. During that time period --

3 THE COURT: This is not cross-examination. You're now  
4 developing evidence, which you're allowed to do, but not  
5 allowed to lead.

6 MR. BATH: Thank you, Judge.

7 THE COURT: You're going beyond the scope of the  
8 examination, right?

9 MR. BATH: On this topic, yes, I think so, Judge.

10 THE COURT: Avoid leading, please.

11 Q. Did you have discussions with Tim Muir in the first 90 days  
12 he started at CLK about the tribal model?

13 MR. SCOTTEN: Objection.

14 THE COURT: Basis.

15 MR. SCOTTEN: We are well into the period of the  
16 charged conduct, and so Mr. Muir has, by this question, already  
17 joined the charged conduct. It's too late for any advice of  
18 counsel defense.

19 THE COURT: Sir, you can answer that question yes or  
20 no.

21 A. Yes.

22 THE COURT: Next question.

23 Q. Did he ask you to tell him about your understanding of the  
24 tribal model?

25 MR. SCOTTEN: Objection.

1 THE COURT: Sustained.

2 MR. BATH: Judge, may we approach?

3 THE COURT: You may.

4 (At the sidebar)

5 MR. BATH: Judge, I understood I was going to be  
6 allowed to present evidence about Mr. Muir having conversations  
7 with other lawyers, and doing his own research and looking at  
8 statutes, etc., etc., to obviously form the basis for good  
9 faith as it relates to any of the statutes and willfulness as  
10 it relates specifically to Count One.

11 I am not going to ask this witness what he told him,  
12 but I am just looking for direction, because I understood I  
13 could ask him if Mr. Muir asked him about tribal sovereignty  
14 and sovereign immunity and those types of things. And if I am  
15 not allowed to do that, I apologize, but that's where I was  
16 going with this.

17 THE COURT: You're right that Mr. Muir, if he takes  
18 the stand, can testify to what he did and what he learned, as  
19 bearing on his own intent and willfulness. As to the, in  
20 essence, establishing that there were conversations is  
21 consistent with that.

22 So let me hear the government's objection, as framed  
23 by Mr. Bath, which is not getting into the substance but  
24 establishing the fact of the conversations.

25 MR. SCOTTEN: Your Honor, if it's just that there was

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Schulte - Cross

1 a fact of the conversation, he has done that. That came in.  
2 We didn't even object. The next question is, Well, did you  
3 discuss the tribal model? So now we are getting into  
4 substance, and I do think it is sneaking in of an implicit  
5 advice of counsel, you talked to this very knowledgeable lawyer.

6 It's not going to be a disputed issue on Mr. Muir's  
7 cross that he talked to Mr. Schulte. We may try to impeach him  
8 on many things, but we are not going to claim that you made up  
9 the fact that you spoke to Mr. Schulte or Mr. Morgan, and we  
10 certainly are not going to suggest you're lying about the  
11 subjects. He doesn't need to start saying here are the  
12 subjects I discussed with other experienced lawyers. That's an  
13 advice of counsel defense which he has disclaimed.

14 THE COURT: I think the way to do it is to establish  
15 the frequency of his conversations with Mr. Muir, which I will  
16 allow you to do, Mr. Bath.

17 MR. BATH: May I ask permission because I don't want  
18 this witness to go outside those bounds. If I can do a little  
19 leading, I think I can get through that. Can I name the  
20 topics?

21 THE COURT: No, I think that's a disguised advice of  
22 counsel defense.

23 You can put your own time frame on the question. I  
24 don't consider that leading. In the early part of 2006 or fall  
25 of 2006, how often did you meet with him, how often did you

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Schulte - Cross

1 have conversations with Mr. Muir?

2 MR. BATH: So I understand, I will stay away from the  
3 topics. I can talk about frequency. And then, if and when  
4 Mr. Muir testifies --

5 THE COURT: That's a different story.

6 MR. BATH: Thank you.

7 (Continued on next page)

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Schulte - Cross

1 (In open court)

2 BY MR. BATH:

3 Q. So in 2006, once Mr. Muir began with CLK, you had  
4 conversations with Mr. Muir?

5 A. Correct.

6 Q. Telephonic?

7 A. Both telephonic and in person.

8 Q. Did you exchange e-mails?

9 A. Yes. At that period of time, I would say fairly  
10 frequently, maybe daily.

11 Q. Would you look at -- just for the witness only, please --  
12 Defense Exhibit 1442.

13 I am not asking questions right now. Just look at  
14 that for yourself, Mr. Schulte.

15 MR. BATH: Do we have a second page we can show the  
16 witness?

17 Q. I will give you a paper copy if that's easier.

18 Do you recognize that exhibit?

19 A. Yes, I do.

20 Q. Is that a document that would have been prepared in your  
21 normal course of business?

22 A. Yes, it would.

23 Q. Are you one of the authors of that document?

24 A. Can you repeat that?

25 Q. Are you one of the authors of the document?

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Schulte - Cross

1 A. Yes.

2 Q. Did you keep it in the ordinary course of your business?

3 A. Yes.

4 Q. Is that document, as it looks like you have it in front of  
5 you, is it complete? Is there anything missing?

6 A. It appears to be complete.

7 Q. That's all I need for that now. Thank you.

8 THE COURT: All right.

9 Q. As you went forward from 2006 to 2007, you continued to  
10 have contact with Mr. Muir?

11 A. Yes.

12 Q. That continued till when?

13 A. Up until maybe 2016.

14 Q. There were a lot of cases you were involved in?

15 A. Yes.

16 Q. A litigation we heard back in Colorado?

17 A. Correct.

18 Q. And in California?

19 A. Correct.

20 Q. And the Colorado litigation just didn't end at one level of  
21 the court, did it?

22 A. No. It was appealed multiple times.

23 Q. There was some appellate work, and then it came back to the  
24 district court, correct?

25 A. Correct.

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Schulte - Cross

1 Q. So there were lots of court hearings in Colorado?

2 A. Yes.

3 Q. The same with California?

4 A. Yes.

5 MR. SCOTTEN: Objection. Relevance.

6 THE COURT: I would just advise that if you want to  
7 ask these questions, there is an issue of door opening, and if  
8 you open the door, so be it.

9 MR. BATH: Yes, sir.

10 THE COURT: Do you want to withdraw those questions?

11 MR. BATH: At this time I will, Judge.

12 THE COURT: That's fine.

13 Q. Was there a merger of CLK and AMG in 2008?

14 A. Yes.

15 Q. Were you involved in that?

16 A. I was.

17 Q. What was your -- who did you represent?

18 A. I represented AMG Services and the Miami Tribe of Oklahoma.

19 Q. Was Mr. Muir involved in that?

20 A. I believe he was.

21 Q. Do you recall necessarily his level of involvement?

22 A. I believe he represented CLK Management.

23 Q. Going forward in 2010, you have already discussed with us  
24 the *Tucker vs. AMG* lawsuit, correct?

25 A. Correct.

HA48TUC5

Schulte - Cross

1 Q. You represented AMG, correct?

2 A. Correct.

3 Q. We saw the letter you wrote to Pete Smith who represented  
4 Mr. Tucker?

5 A. Correct.

6 Q. But you talked to Mr. Muir before the lawsuit was filed?

7 A. I did.

8 Q. And after the lawsuit was filed?

9 A. I did.

10 Q. At some point in time, there was a lawsuit involving  
11 Hallinan?

12 A. Yes.

13 Q. Were you involved in that?

14 A. I was. Yes, I was involved with that.

15 Q. What was your involvement?

16 A. Well, initially, when the suit was filed, I believe I  
17 prepared some correspondence on behalf of AMG to Mr. Hallinan's  
18 attorney, and I believe Mr. Tucker's attorney, in an attempt to  
19 get them to resolve the dispute. And then after that, I didn't  
20 appear in the litigation as counsel of record, but I attended  
21 some hearings and generally monitored the status of the  
22 litigation.

23 Q. Did somebody else represent -- was AMG in the suit?

24 A. CLK Management was, although at the time it had been merged  
25 into AMG, as I recall. So indirectly it was.

HA48TUC5

Schulte - Cross

1 Q. Who represented AMG?

2 A. I believe both myself and Mr. Muir.

3 Q. Was there counsel in Las Vegas on behalf of AMG?

4 A. There was, yes. There was local counsel who appeared on  
5 behalf of AMG and CLK I believe.

6 Q. What was Mr. Muir's involvement, do you recall?

7 A. He didn't appear in the litigation, as I recall, but it was  
8 much like me, kind of monitoring the status of the litigation.

9 Q. Did you meet Pete Smith in that lawsuit?

10 A. I did.

11 Q. Who did he represent?

12 A. I believe he represented Mr. Tucker and Mr. Tucker's  
13 companies that were named in the litigation.

14 Q. Do you remember at some point there was a settlement of  
15 that lawsuit?

16 A. I do recall a settlement, yes.

17 MR. BATH: Can you put up for the witness Defense  
18 2811.

19 Q. Is that up on your screen, Mr. Schulte?

20 A. Yes, it is.

21 Q. There is a second -- take a second with the first page, if  
22 you would, please.

23 There is a second page on that as well.

24 MR. BATH: Can we show that to him, Eli.

25 Q. Have you had a chance to look at that document?

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Schulte - Cross

1 A. Can you go back to the first page?

2 Q. Sure.

3 A. OK. Yes, I recall.

4 Q. Generally, what is this document?

5 A. It's an e-mail from me to -- well, it's a forwarded e-mail.

6 It's an e-mail that I forwarded -- let me start over.

7 It's an e-mail from myself to Don Brady that's been

8 forwarded to Tim Muir and Scott Tucker.

9 Q. Forwarded by whom?

10 A. By me.

11 Q. What does this involve? I don't want you to read it, but  
12 what is the subject matter?

13 A. As I recall, the subject matter is --

14 MR. SCOTTEN: Objection. At some point it should be  
15 offered or not.

16 MR. BATH: I will offer it.

17 THE COURT: Any objection?

18 MR. SCOTTEN: Objection. It appears to be hearsay.

19 THE COURT: Let me see the full document, please.

20 This relates to which litigation?

21 MR. BATH: This relates to the Hallinan litigation,  
22 Judge. I have the complete document marked. Our purpose would  
23 be relating to Mr. Schulte relaying information to Mr. Muir.  
24 It's the last e-mail that's going to be relevant, which I will  
25 tie up later. Perhaps I can offer it subject to further

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Schulte - Cross

1 tie-up.

2 THE COURT: Who were you representing at the time,  
3 Mr. Schulte?

4 THE WITNESS: At this time in the Hallinan litigation  
5 or just in general?

6 THE COURT: In general.

7 THE WITNESS: I am representing the Modoc tribe, the  
8 Santee Sioux Nation, and Miami Tribe of Oklahoma.

9 THE COURT: Who were you representing in the  
10 litigation?

11 THE WITNESS: It would have been AMG Services, which  
12 is the Miami tribal entity, and I believe also MTE Services,  
13 which was the Modoc tribal entity.

14 THE COURT: I will receive it. Overruled.

15 (Defendants' Exhibit 2811 received in evidence)

16 MR. BATH: If we can publish that for the jury.

17 If we can go to the bottom third of the first page.

18 Q. Mr. Schulte, what is the date?

19 A. It is February 25, 2010.

20 Q. At the bottom of the page is an e-mail from Don Brady to  
21 you?

22 A. It is.

23 Q. We have heard about Shilee. Who is she?

24 A. She is an attorney that worked at my firm. She was either  
25 an associate attorney or my partner at this point in time.

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1 MR. BATH: If we can go to the last page just so the  
2 jury can see the whole document.

3 Q. The top of that page is a carryover from the page before,  
4 is that correct?

5 MR. BATH: We can blow that up just so everybody can  
6 read it.

7 Can we go back to the first page, Eli.

8 If we can go to the top half of that page.

9 Q. Mr. Schulte, the middle e-mail talks about overnighting  
10 documents to Don Brady, is that correct?

11 A. That is correct.

12 Q. What documents are we talking about?

13 A. As I recall, those would have been the settlement documents  
14 in the Hallinan lawsuit.

15 Q. Your top e-mail there is relaying that you had talked to  
16 Don?

17 A. Yes.

18 Q. And Don is who?

19 A. That's Don Brady.

20 MR. BATH: Thank you, Eli.

21 Q. And that lawsuit got settled, is that right?

22 A. Yes.

23 Q. And that was March 2010, does that sound about right?

24 A. Yes.

25 MR. BATH: That's all I have. Thank you.

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1           THE COURT: All right. Ladies and gentlemen, you will  
2 have -- I will tell you what. Let's take our ten minutes now  
3 and then we will be back in action with the government's  
4 cross-examination of the witness.

5           Please do not discuss the case among yourselves or  
6 with anybody. Enjoy the break.

7           (Jury exits courtroom)

8           THE COURT: I am asking that a "marked to show  
9 changes" version of the draft jury instructions be marked as  
10 the next court exhibit, which is?

11          THE DEPUTY CLERK: 12.

12          THE COURT: Court Exhibit 12. And a clean copy of the  
13 jury instructions be marked as Court Exhibit 13.

14          When we discuss the instructions, we are going to work  
15 off of Court Exhibit 13, and you will tell me on what page,  
16 what line you have an issue.

17          We are in recess. Thank you.

18          (Recess)

19          MR. ROTH: Judge, may we raise a brief scheduling  
20 issue with you?

21          THE COURT: Go ahead.

22          MR. ROTH: It's in regard to our next witness, Lance  
23 Morgan, who is a member of the same firm as Mr. Schulte. We  
24 just wanted to proffer what his testimony will be to make sure  
25 you are going to permit the testimony.

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Schulte - Cross

1 THE COURT: Why don't we do it after 5:00?

2 MR. ROTH: He has been here for five days, and in  
3 terms of scheduling, he is trying to get out of town. I am not  
4 clear that, your Honor --

5 THE COURT: Listen, if I got fair warning, if you  
6 asked me this morning, if you asked me during lunch. I have  
7 got a jury in the box, and I have a clock running down on  
8 what's left of the day. I will pick it up at 5:00.

9 MR. ROTH: Thank you.

10 (Continued on next page)

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Schulte - Cross

1 (Jury present)

2 CONLY JOHN SCHULTE, resumed.

3 THE COURT: Please be seated.

4 Mr. Scotten, you may inquire.

5 MR. SCOTTEN: Thank you, your Honor.

6 CROSS-EXAMINATION

7 BY MR. SCOTTEN:

8 Q. Good afternoon, Mr. Schulte.

9 A. Good afternoon.

10 Q. I want to start by making sure I am correct on the timing.

11 You first meet Scott Tucker in September of 2003,  
12 correct?

13 A. I believe I had a telephone conversation with him in  
14 September of 2003. That is correct.

15 Q. And you had not met him or talked to him before that time?

16 A. No, I had not.

17 Q. At that time, you are representing the Santee Sioux?

18 A. Correct.

19 Q. You continue to represent the Santee Sioux in their  
20 negotiation with Tucker, negotiations on the opposite side,  
21 correct?

22 A. Correct.

23 Q. In December of that same year 2003, you are still  
24 representing the Santee Sioux, correct?

25 A. That is correct. I believe at that point in time, they

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Schulte - Cross

1 decided not to proceed with an agreement with Mr. Tucker at  
2 that time.

3 Q. So the answer is yes?

4 A. Yes. We still acted as general counsel of the Santee Sioux  
5 Nation.

6 Q. And that is the point at which you decided -- you testified  
7 that you viewed Mr. Tucker as your client, although you hadn't  
8 entered any -- he actually didn't retain you, but you viewed  
9 him as your client?

10 A. I had a phone discussion with Mr. Tucker I know in the  
11 early part of December 2003.

12 Q. Let me ask again. That is the point at which you began  
13 regarding Mr. Tucker as your client?

14 A. I considered that conversation to be privileged within the  
15 attorney-client privilege, yes.

16 Q. Did you consider Mr. Tucker to be your client in December  
17 of 2003?

18 A. Yes.

19 Q. Then you did some work for him, although he had not  
20 retained you, for the next four or five months?

21 A. I didn't do work for Mr. Tucker during that time period. I  
22 did work for the Kickapoo Tribe of Kansas, is my recollection.

23 Q. So when you provided the advice that you just testified  
24 about, you were not working for Mr. Tucker?

25 A. I had a separate engagement with the Kickapoo Tribe of

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Schulte - Cross

1 Kansas to draft their code, lending code, and I believe their  
2 organizational entity.

3 Q. But my question is about Mr. Tucker.

4 A. That's correct.

5 Q. You testified before you provided advice to Mr. Tucker in  
6 this window between December of 2003 and May or June of 2004,  
7 correct?

8 A. Correct.

9 Q. And you were not working for Mr. Tucker then?

10 A. I engaged in discussions with Mr. Tucker then. We were not  
11 formally engaged, in terms of having a written engagement  
12 letter or attorney-client agreement, until May of 2004.

13 Q. So you considered yourself to be informally working for Mr.  
14 Tucker?

15 A. There was no work that was done; there were just  
16 discussions.

17 Q. Those discussions included you providing your legal opinion  
18 to him?

19 A. My recollection is we discussed, yes, the concepts  
20 contained in the Preston Gates letter, and perhaps some other  
21 ideas that I had about the tribal model.

22 Q. So your testimony is that you provided your opinion to him  
23 as a client?

24 A. Yes.

25 Q. I would like to -- let's continue with the timing first.

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Schulte - Cross

1           Mr. Tucker formally retained you around May of 2004?

2       A.   Yes, at some time during May of 2004 is my best  
3       recollection.

4       Q.   And you're also still representing the Santee Sioux?

5       A.   Correct.

6       Q.   And you have some other tribal clients who at least  
7       eventually will become involved in this?

8       A.   Yes.

9       Q.   You also acquire clients that you have stated are tribal  
10      entities while you're representing Mr. Tucker?

11      A.   Yes.

12      Q.   In the 2005, maybe 2006 time period, you are representing  
13      both Mr. Tucker and the tribal entities on the other side of  
14      the agreements with him?

15      A.   Correct.

16      Q.   And you did a conflict waiver, at least for the Santee  
17      Sioux, correct?

18      A.   Yes.

19      Q.   Did you do conflict waivers for the other tribes?

20      A.   I believe that we did at some point in time, but I don't  
21      recall the date.

22      Q.   Those would have been necessary, right, because you were  
23      working on both sides of the transaction?

24      A.   I did not represent any transaction between the Miami tribe  
25      and Mr. Tucker at that time. When I was retained by Mr.

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Schulte - Cross

1 Tucker, he had already had agreements with the Miami tribe and  
2 the Modoc tribe.

3 Q. And those were agreements in which Mr. Tucker kept 99  
4 percent of the profits from the deals, correct?

5 A. No, that's not correct.

6 Q. Those were deals in which Mr. Tucker's company kept 99  
7 percent of the gross total revenues from the lending business?

8 A. Mr. Tucker was entitled to 99 percent of the gross total  
9 revenues, but also had the responsibility to pay the operating  
10 costs of the operation.

11 Q. So the answer is yes?

12 A. As I stated it, yes.

13 Q. So you were on both sides of an agreement where one of your  
14 clients was getting 1 percent and the other client was getting  
15 99 percent, although they had to pay expenses?

16 A. I did not negotiate those agreements between Modoc and  
17 Miami. I represented them at the same time, yes, and they both  
18 had an agreement, and I represented both parties, that is  
19 correct.

20 Q. And you didn't go to your clients, the Modoc or the Santee  
21 Sioux, and say, you could ask for 2 percent, did you?

22 A. I don't recall any specific conversations about that, no.

23 Q. It would have been awkward because then you would have been  
24 taking a percentage from Mr. Tucker, right?

25 A. Perhaps, yes.

1 Q. So then you continue to represent Mr. Tucker and these  
2 tribal clients till around when, when is it that you cease  
3 representing Mr. Tucker?

4 A. Again, I don't recall any specific dates, but my best  
5 recollection is somewhere around the end of 2007 or beginning  
6 of 2008.

7 Q. What is the latest date on which you represented Mr.  
8 Tucker?

9 A. Again, I can't remember a specific date.

10 Q. No later than the fall of 2008?

11 A. I would place it earlier than that. Probably no later than  
12 March of 2008. That's my best guess.

13 THE COURT: Well, you're not to guess. You can give  
14 an estimation or your best recollection, that you can testify  
15 to, but guesses are not permitted.

16 A. My best estimation would have been, again, the early part  
17 of 2008. I would say March would be the latest, March of 2008.

18 Q. Not too far in 2008?

19 A. Yes. That's my best recollection.

20 Q. Let's look at Defendants' Exhibit 301, if we can.

21 MR. SCOTTEN: If we can zoom in on the fifth line of  
22 paragraph 1.

23 Q. So this is from the letter that you gave Mr. Tucker after  
24 he formally retained you, correct?

25 A. Correct.

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Schulte - Cross

1 Q. In here you essentially were giving him a series of  
2 recommendations of changes to what you had already seen,  
3 correct?

4 A. Yes. I was giving him recommendations, yes.

5 Q. Here what we are looking at is, in terms of the  
6 recommendation you want to make, or in terms of how the  
7 business should be structured, it should not be marketing an  
8 exemption from state regulation, correct?

9 A. That's correct.

10 Q. And the idea is a tribe can have a business in partnership  
11 with others, but it can't just sell that business the right to  
12 get around state regulation, correct?

13 A. I believe that's generally an accurate statement, yes.

14 Q. And you knew that in this case, a big part of what Mr.  
15 Tucker was looking to do was get around the state regulation,  
16 correct?

17 A. He wanted his business to be lawfully operated.

18 Q. And it wouldn't be lawfully operated because of state  
19 regulation, right?

20 A. Absent the tribes being the lender, no. If Mr. Tucker was  
21 the lender instead of the tribes, then it would have been  
22 regulated by state law, that's correct.

23 Q. Which would have made it illegal?

24 A. In some states.

25 Q. You knew that some states had usury laws that prohibited

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Schulte - Cross

1 charging 700 percent interest for a loan, correct?

2 A. Yes, some states did.

3 Q. I suppose, more importantly, you knew that Mr. Tucker knew  
4 that?

5 A. Yes.

6 Q. And you knew that Mr. Tucker was extending Internet loans  
7 throughout the country at the time, correct?

8 A. That was part of the plan to deal with the tribal lenders,  
9 correct.

10 Q. It's your testimony that you did not know Mr. Tucker was  
11 lending before you entered these agreements with the tribes?

12 A. I believe he was lending under a different model, called  
13 the County Bank model at some point, prior to that.

14 Q. So you knew he was engaged in the business of extending  
15 payday loans before any of this tribal involvement, correct?

16 A. That was my understanding.

17 Q. And you knew that the interest rates he was charging were  
18 illegal in some of the states he was charging them in, correct?

19 A. If the state law applied to those loans, correct.

20 Q. And so that was why he needed to seek out this, what you  
21 call a tribal model, correct?

22 A. Yes. He wanted the loans to be lawful.

23 Q. Well, specifically, he needed state regulation -- he needed  
24 to not have state regulation apply to his loans, correct?

25 A. Yes. Tribal regulation instead of state regulation,

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Schulte - Cross

1 correct.

2 Q. So that is why he was seeking out the tribes?

3 A. Correct.

4 Q. And you were advising here that if the tribe isn't adding  
5 value other than marketing an exemption from state regulation,  
6 that's a problem, correct?

7 A. In other contexts it had been a problem, yes.

8 MR. SCOTTEN: We can zoom back out.

9 Q. Let's go down to the last sentence on page 1.

10 There at the bottom it says, "As it stands now, the  
11 UMS agreements with the tribal corporations do not adequately  
12 reflect the tribal corporation or tribal government adding  
13 value to the transaction." Correct? Is that what it says?

14 A. That's what it says.

15 Q. And UMS was Mr. Tucker's company, correct?

16 A. That is correct.

17 MR. SCOTTEN: We can go on to the next page.

18 If we can just highlight what is left of that  
19 paragraph on the top four lines.

20 Q. So here you discuss one possibility was to have tribal  
21 employees perform some kind of work on the reservation,  
22 correct?

23 A. That is correct.

24 Q. And you also said that it is important that the  
25 agreement -- and that's the agreement between Mr. Tucker and

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Schulte - Cross

1 the tribal entity, correct?

2 A. That is correct.

3 Q. "The agreement reflect that it is the tribe's  
4 responsibility to make the decision over whether to lend the  
5 money." Correct?

6 A. That's what it says.

7 Q. It does not say over the terms and conditions of loans in a  
8 general matter, correct?

9 A. No, it does not say that.

10 Q. It says over whether to make the loan, correct?

11 A. Correct.

12 Q. Let's go down to paragraph 6.

13 Now, here you're advising this tribal corporation  
14 needs to keep up the appearances that they are in the business  
15 of lending money, correct?

16 A. Right.

17 Q. And it is not beneficial to the legal position you're  
18 taking if the tribal corporation appears to be just a front,  
19 correct?

20 A. That is right.

21 Q. If it is just a front that provides cover for the business,  
22 that doesn't benefit your legal position, correct?

23 A. That's right. You need to actually be in the business of  
24 lending money.

25 MR. SCOTTEN: Let's take that down.

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Schulte - Cross

1 Q. I also wanted to ask you, during this period, from December  
2 of 2003 up to about June of 2004, you didn't tell Mr. Tucker  
3 that you disagreed with what you just referred to as the PG  
4 letter, did you?

5 A. I don't ever recall telling him that I disagreed with that  
6 letter, no.

7 Q. And you also noted some other flaws at some point in his  
8 business, the wording of the choice of law clauses in these  
9 contracts?

10 A. I had discussions and made recommendations on ways that  
11 those clauses could be made better, yes.

12 Q. You told him it was important that the name of the tribe or  
13 the tribal entity be mentioned in there somewhere, correct?

14 A. Yes.

15 Q. It was early on in your involvement with him?

16 A. I believe it was fairly early on, yes.

17 Q. I want to talk a little bit about affidavits now and then I  
18 will come back to them.

19 As a general matter, as an attorney, you are going to  
20 be dependent on others for the facts to be placed in your  
21 affidavits, correct?

22 A. Yes.

23 Q. And you testified a lot about speaking with Mr. Brady, Mr.  
24 Little Axe, Mr. Ickes, and a couple of other folks in the  
25 process of drafting those, right?

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Schulte - Cross

1 A. Yes.

2 Q. And you also spoke with Mr. Muir about those affidavits,  
3 correct?

4 A. Depending upon the time that the affidavits were prepared,  
5 yes, I would likely have either discussed them or he would have  
6 gotten a copy of them.

7 Q. By time frame, I assume you mean after 2006 when he is  
8 involved in the business?

9 A. Yes.

10 Q. Before then, you're obviously not sending them to him?

11 A. Right.

12 Q. But after that, because you perceive him as an important  
13 figure, you're sending him the affidavit or discussing them  
14 with him or both?

15 A. Generally, he would have gotten a copy of them. I don't  
16 believe he was involved in drafting or editing, to my  
17 recollection.

18 Q. You remember him editing if you sent him copies, as you do  
19 with many legal documents, before filing, correct?

20 A. Yeah. Either before or when I filed them, yes. It would  
21 not be uncommon for me to send him drafts of filings before  
22 they were filed.

23 Q. In the early going especially, before Mr. Muir came on, you  
24 also sent affidavits to Mr. Tucker, correct?

25 A. He would certainly have gotten copies of the completed

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Schulte - Cross

1 affidavits.

2 Q. Your testimony is that you didn't send them to him before  
3 filing also?

4 A. I may have.

5 Q. Let's look at Government Exhibit 309A.

6 So this here is an example of you copying him after  
7 filing, correct?

8 A. Yes.

9 Q. You're also telling him what statements you are going to  
10 make in court, correct?

11 A. Yeah. Making the same arguments that were in the documents  
12 that I had sent him, yes.

13 Q. This is in the Colorado litigation in July 2005?

14 A. Yes.

15 Q. Let's also look at 315.

16 MR. SCOTTEN: Let's start at the bottom e-mail.

17 Can we add just a couple of the top lines there.

18 Where it starts Conly J. Schulte.

19 I'm sorry, Ms. Grant. I am trying to get the bottom  
20 e-mail only.

21 That's perfect. Thank you.

22 Q. So here what we have is Shilee Mullin sending an e-mail to  
23 you and Ken Bellmard, correct?

24 A. Yes.

25 Q. And you testified that Ms. Mullin was a lawyer at your

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Schulte - Cross

1 firm?

2 A. Yes.

3 Q. So here what is being attached are drafts, correct?

4 A. Yes. That's what it says.

5 MR. SCOTTEN: Now let's go up to the e-mail above it.

6 Q. Here you're forwarding that e-mail to Mr. Tucker, right?

7 A. Yes.

8 Q. And you're telling him you're attaching drafts that are  
9 going to be finalized and filed in the future, correct?

10 A. Yes.

11 Q. So here you are in fact sending him drafts in advance of  
12 filing?

13 A. That is correct.

14 MR. SCOTTEN: Now let's go to the top e-mail.

15 Q. So here you can see a couple of e-mails between Blaine  
16 Tucker and Scott Tucker, correct?

17 A. That's what it appears to be, yes.

18 Q. By the way, who is Blaine Tucker?

19 A. Blaine Tucker was Scott Tucker's brother.

20 Q. Do you see on the top where Blaine Tucker says that he  
21 likes the one from Don Brady, Don B, correct?

22 A. That's what it says.

23 Q. Don Brady didn't write any legal arguments, did he?

24 A. No.

25 Q. So if you send a piece of paper from Don Brady to Mr.

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Schulte - Cross

1 Tucker, that's a Don Brady affidavit?

2 A. That would be referring to his declaration or affidavit,  
3 correct.

4 Q. Now, before I come off the affidavits for a second, you  
5 testified here that you had an independent belief that these  
6 affidavits were true, correct, at least some of them?

7 A. I believed them to be true, yes.

8 Q. That's what I wanted to ask. Did you believe them to be  
9 true in the sense that you didn't think you were lying, or did  
10 you believe them to be true independent -- did you believe them  
11 to be true only in the sense that you didn't believe you were  
12 lying?

13 A. I believed them to be true, the contents. I believed the  
14 contents of the affidavits to be true.

15 (Continued on next page)

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Ha4Wtuc6

Schulte - Cross

1 BY MR. SCOTTEN:

2 Q. Did you believe the contents?

3 A. I believe the contents of the affidavit to be true.

4 Q. And you believed them to be true on based on your personal  
5 knowledge and not just because Don Brady or Lee Ickes, or  
6 whoever, was willing to sign them?

7 A. The basis of my beliefs were with, in part, with  
8 discussions of the clients, yes.

9 Q. What was the other part?

10 A. Probably discussions I had with Mr. Tucker. Yes.

11 Q. And in fact, there were times you had to learn essentially  
12 all the essential facts from Mr. Tucker, weren't there?

13 A. I'm not sure what you mean by all the essential facts.

14 Q. Well, there were times when you had to learn basic facts of  
15 the lending operation from Mr. Tucker relative to -- and not  
16 from the tribal client, correct?

17 A. I wouldn't say all, but there were some facts that I  
18 would -- I would rely on Mr. Tucker for, yes.

19 Q. Would those facts include the fact that loans were being  
20 made by a tribal corporation?

21 A. That information I -- I would have had discussions with  
22 both the person who signed the affidavit and Mr. Tucker,  
23 likely.

24 Q. I'd like to show you what's marked as Government Exhibit  
25 4116. It's got a few pages to it, so I'm going to hand you a

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Schulte - Cross

1 copy you can flip through.

2 A. OK. Thank you.

3 Q. Mr. Schulte, is this an email exchange, an email chain  
4 essentially, between you and Mr. Tucker?

5 A. Yes, it is.

6 MR. SCOTTEN: Your Honor, the government offers 4116.

7 MR. ROTH: No objection.

8 THE COURT: Received.

9 (Government Exhibit 4116 received in evidence)

10 Q. Now, this is concerning the SFS agreement, correct?

11 A. Yes.

12 Q. And that was the entity established relative to the Santee  
13 Sioux, correct?

14 A. It is.

15 Q. And you testified that the Santee Sioux was the tribe that  
16 you were closest with, because you had previously represented  
17 them, correct?

18 A. Yes.

19 Q. And you also visited them more than the other tribes,  
20 correct?

21 A. Yes.

22 Q. They were easy to get to, so you could get to the  
23 reservation quite often?

24 A. They were closer, yes.

25 Q. I want to direct your attention to -- I believe we're going

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Schulte - Cross

1 to go to the second page, and if we can view the one that says  
2 original message. Sorry. They all say original message, the  
3 one with the gray bar above it.

4 A. OK.

5 Q. OK. So you're talking about forwarding something to the  
6 Santee Sioux?

7 A. Yes.

8 Q. And then you're also asking whether Mr. Tucker will be  
9 sending instructions for some kind of mailing thing, correct?

10 A. Well --

11 Q. I'm looking at the second sentence.

12 A. Two, yes. Two.

13 Q. The one that ends with a question mark.

14 A. Yeah, I tell him that I'm sending him sending instructions,  
15 mailing address, FedEx billing code, etc. -- or I'm asking him  
16 for instructions. I'm sorry.

17 Q. Right, and that's because in addition to the lending stuff,  
18 the Santee Sioux also acted as a mail processor, as the  
19 agreement put it, for UMS, correct?

20 A. That was contemplated at the time, though I'm not sure that  
21 agreement ever was performed.

22 Q. And so regardless of what that sentence is about, whether  
23 or not that went into effect --

24 A. Right, right.

25 Q. And then in the third sentence, you ask, you say, "The

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Schulte - Cross

1 tribe," and that's the Santee Sioux, "was also wondering about  
2 the status of the other agreement. When will the lending  
3 operation begin, and what do we need to do to get it going?"  
4 Is that right?

5 A. Where are you referring to?

6 Q. Third sentence, ending with a question mark.

7 A. Oh, yes. Yes. OK.

8 Q. You're asking when is the lending relative to the Santee  
9 Sioux going to start?

10 A. Correct.

11 Q. And what does the tribe need to do to make that happen?

12 A. Yes.

13 Q. And if we can go up to just the previous email. I'm sorry.  
14 When I say previous, I mean above in the document.

15 A. I understand.

16 Q. Later in time.

17 A. Right.

18 Q. Let's just view paragraph 3.

19 So here, Mr. Tucker's talking about the Santee's other  
20 agreement, correct?

21 A. Correct.

22 Q. And the other agreement, from your prior email, that's the  
23 lending agreement, in contrast to the mailing agreement?

24 A. I believe that's correct.

25 Q. And you had just asked him when is it going to start and

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Schulte - Cross

1 what the tribe needed to do to get it started, right?

2 A. Right.

3 Q. And he responds to you, We started that business in the  
4 middle of March, the Santee will be getting their check for the  
5 business we'd already done on the 20th of April?

6 A. Yes.

7 Q. And this email is dated April 1, correct, of 2005?

8 A. Yes, it is.

9 Q. So neither you nor the Santee Sioux knew there was a  
10 lending business being conducted supposedly in their name at  
11 this time, correct?

12 A. Well, I can't speak for the Santee Sioux. I'm not there on  
13 a daily basis.

14 Q. Well, let's go back to the previous email.

15 A. Yes, but it's clear that I wasn't aware of it.

16 Q. Well, let's go back to the previous email. And if you look  
17 at the third sentence, that states, "The tribe is also  
18 wondering about the status of the other agreement," correct?

19 A. That's what it says, yes.

20 Q. I want to go on to another matter. I want to ask you about  
21 information you would get from your clients as opposed to  
22 information you yourself knew. I want to show you what's  
23 marked as Government Exhibit 4122. You know what, let me hand  
24 up a copy again so you can see all of it. This one's longer.  
25 If you want to flip through it and see if you recognize it, I'm

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Schulte - Cross

1 sure there won't be time to read the whole thing.

2 A. OK.

3 I've reviewed it.

4 Q. And is it an email from you to Scott Tucker to which you  
5 attach filings you had made in court?

6 A. Yes.

7 MR. SCOTTEN: Your Honor, the government offers 4122.

8 MR. ROTH: No objection.

9 THE COURT: Received.

10 (Government Exhibit 4122 received in evidence)

11 Q. Starting on the first page, we actually just looked at this  
12 email in another context, but without the attachment, correct?

13 A. Correct.

14 MR. SCOTTEN: I want to go to page 5, footnote 1, and  
15 if you could just blow that up.

16 Q. And take a second -- actually, you could read it aloud; I  
17 just want the jury to hear it. I'll blow it up for you to the  
18 screen. It'll be faster.

19 A. It says, "The state has also erroneously assumed that  
20 Preferred Cash is a d/b/a of Executive Global Management Inc.  
21 Preferred Cash is not a d/b/a of Executive Global Management  
22 Inc. nor is Preferred Cash a subsidiary, agent, partner,  
23 associate or manager of Executive Global Management Inc."

24 Q. And it also has citations to the Campbell affidavit, is  
25 that correct?

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Schulte - Cross

1 A. Correct.

2 Q. Here, you are telling the Court that Preferred Cash is not  
3 a doing-business-as name used by a company called Executive  
4 Global Management, correct?

5 A. Correct.

6 Q. Preferred Cash was the name originally associated with the  
7 tribal entity of the Santee Sioux, correct?

8 A. That is my recollection, yes.

9 Q. It changes to OneClickCash later?

10 A. Yes.

11 Q. And so the court is reading this, and it indicates there's  
12 no link between these two things, Preferred Cash, on the one  
13 hand, and Executive Global Management, on the other, right?

14 A. It states that Preferred Cash is not a d/b/a of Executive  
15 Global Management. Correct.

16 Q. Right. It doesn't explain that there is some other  
17 connection, correct?

18 A. Correct.

19 Q. In fact, it asserts that the state is making an erroneous  
20 assumption that there's a connection between the two, right?

21 A. That's what it says, yes.

22 Q. And although you're citing an affidavit, this is in a brief  
23 you worked on; these are your words, essentially?

24 A. The brief would have been prepared by my firm, yes.

25 Q. And you approved that, right?

Ha4Wtuc6

Schulte - Cross

1           THE COURT: And just please tell the jury what d/b/a  
2 stands for.

3           THE WITNESS: It's doing business as.

4           THE COURT: Thank you.

5           Q. In this case, Executive Global Management could be a  
6 corporate name but doing business as could be sort of their  
7 public business name, right?

8           A. Be like a trade name.

9           Q. And so eventually -- eventually, in fact, Preferred Cash  
10 was the d/b/a of the Santee Sioux Financial Services, correct?

11          A. Preferred Cash, yes.

12          Q. And my colleague reminded me, I don't think I waited for  
13 your answer to the other question. You approved these filings,  
14 correct? You're sending this to Mr. Tucker, right?

15          A. Yes. I would have reviewed and authorized the filings,  
16 yes.

17          Q. I want to show you what's already in evidence as Government  
18 Exhibit 1735.

19          MR. SCOTTEN: And can we highlight just the top  
20 portion. Yes, that's more than enough.

21          Q. Do you see here where, on the left, it says company legal  
22 name, Executive Global Management, Inc.?

23          A. Yes.

24          Q. And then there, on the right, it says d/b/a name Preferred  
25 Cash?

Ha4Wtuc6

Schulte - Cross

1 A. I see that.

2 MR. SCOTTEN: And if we could go to the bottom.

3 Q. And then there you see a signature and Scott Tucker's name,  
4 correct?

5 A. I see that, yes.

6 Q. And it's dated 2002?

7 A. Yes.

8 Q. So assuming the validity of this document, there was, in  
9 fact, at least a few years prior, Preferred Cash was literally  
10 a d/b/a of Executive Global Management?

11 A. It would appear so from this document, yes.

12 Q. And this court filing, however, gave no indication of that;  
13 it suggested that any link between the two was an erroneous  
14 assumption, correct?

15 A. It did -- it did state that, yes.

16 Q. And this is a document you sent to Scott Tucker before it  
17 was filed, correct?

18 A. This document?

19 Q. No. The court filing.

20 A. Oh. The court filing, I believe that would have been among  
21 the documents I sent to Mr. Tucker, yes.

22 Q. Let's go back to 4122 and look at the attachments on the  
23 front page. Is it not definitely one of the documents you sent  
24 to Mr. Tucker before filing?

25 A. Yes.

Ha4Wtuc6

Schulte - Cross

1 MR. SCOTTEN: Let's put up Government Exhibit 1727.  
2 Correct? Not correct, please.

3 THE WITNESS: Do I have that?

4 MR. SCOTTEN: No, no. It's going to be on the screen.  
5 It's already in evidence.

6 And what I want to do is focus on the two lines of  
7 text in the bottom email. Actually, let's do the whole bottom  
8 email from Crystal Cram.

9 Q. This is a much later email, from 2010, correct?

10 A. That's what it says, yes.

11 Q. And if you look at the two lines of the body, it lays out a  
12 whole history of Preferred Cash Loans, correct? Whole history  
13 might be excessive, a date progression for it, correct?

14 I'll read it. It says, Preferred Cash Loans, Executive  
15 Global, was started in October 2002. It was converted to  
16 OneClickCash, Executive Global, in 2003. That was converted to  
17 OneClickCash, Santee, in September 2005. Correct?

18 A. That's what it says.

19 Q. Right. You're not on this email, but Scott Tucker and  
20 Blaine Tucker are, correct?

21 A. Correct.

22 Q. And I want to be clear, when you filed this piece of paper  
23 suggesting there was no connection between the two, is that  
24 because you intended to create that impression, or you believed  
25 it to be true based on talking to Scott Tucker?

Ha4Wtuc6

Schulte - Cross

1 A. My recollection is I believed it to be true. It's -- yes.

2 Q. You later learned about this connection yourself, didn't  
3 you?

4 A. I -- I subsequently learned that there was, that Executive  
5 Global did do business as Preferred Cash Loans --

6 Q. And --

7 A. Yes. Previous to the Santee Sioux acquiring the trade  
8 name.

9 Q. When did you file your correction with the court?

10 A. I don't recall filing a correction with the court.

11 Q. I want to move forward -- actually, let's do something else  
12 really quickly. Can I show you Government Exhibit 4117. And  
13 do you recognize this? We can flip through the pages, but I'm  
14 assuming you recognize it from the front page.

15 MR. SCOTTEN: Let's scroll down a couple pages for the  
16 witness.

17 A. OK. I recognize the document.

18 MR. SCOTTEN: OK. Let's go all the way to page 4,  
19 note 1, very bottom. You're on the right page, the footnote.

20 Q. This is essentially the same language, except it's for Cash  
21 Advance, correct?

22 A. Yes. And a different -- CB Service Corp.

23 Q. Cash Advance was a business later claimed to be affiliated  
24 with the Miami, correct?

25 A. That is correct.

Ha4Wtuc6

Schulte - Cross

1 Q. And here, you're making the same assertion with respect to  
2 CB Service Corp., that it's an erroneous assumption, that it's  
3 a d/b/a -- sorry, that Cash Advance is a d/b/a of it, correct?

4 A. That's what it states, yes.

5 Q. And here, you're citing, although the words are same,  
6 you're citing the affidavit from Don Brady, correct?

7 A. That is correct.

8 Q. That's what "Brady Aff.," with the paragraph symbol, "16"  
9 means?

10 A. Yes.

11 MR. SCOTTEN: If we could show the witness Government  
12 Exhibit 1734 and the same top portion.

13 Q. And here, we see that, in fact, Cash Advance is the d/b/a  
14 of CB Service Corp., at least as of the time of this document,  
15 correct?

16 A. I assume that that document was true. I had not seen that  
17 document previous, previous to today.

18 Q. Right, assuming it's a bona fide document.

19 A. Right.

20 MR. SCOTTEN: Let's go to the bottom of the page.

21 Q. And there we see Scott Tucker's signature, name and date in  
22 June of 2002, correct?

23 A. That is his name and date. I'm not a handwriting expert,  
24 but I assume that's his signature.

25 Q. You recall seeing that in connection with exhibits before

Ha4Wtuc6

Schulte - Cross

1 with Scott Tucker's signature on them; you identified them for  
2 the defense, correct, 406?

3 A. I may have, but --

4 Q. I mean, you've seen Scott Tucker's signature a lot,  
5 correct?

6 A. Yeah. I'm not saying that it is or is not his signature.

7 Q. Again, you had filed this court statement suggesting the  
8 erroneous assumptions were linked; when you filed that, did you  
9 know that was inaccurate?

10 A. The court filing does not say that it's an erroneous  
11 assumption and that the two are linked. It says erroneous  
12 assumption that it is a d/b/a of -- entity's name.

13 MR. SCOTTEN: Let's go back to the top of this  
14 document so the witness can see it.

15 Q. D/b/a of CB Service Corp., right?

16 A. CB Service Corp., yes, yes.

17 Q. And there's no helpful explanation to the court that, Well,  
18 it used to be a d/b/a a couple months previous, correct?

19 A. There is no explanation stating that, no.

20 Q. And you did, in fact, learn at some later date that Cash  
21 Advance had done business as -- or CB Service Corp. being the  
22 corporate name of Cash Advance, correct?

23 A. Yes, at some point I learned that prior to the Miami tribe  
24 using the d/b/a Cash Advance, it had been used by CB Service  
25 Corp.

Ha4Wtuc6

Schulte - Cross

1 Q. But your testimony is you didn't learn that until the  
2 future, until after this filing, correct?

3 A. That is correct.

4 Q. You didn't file a correction with the court, though, did  
5 you?

6 A. I did not.

7 MR. SCOTTEN: We can take that down.

8 Q. I want to go next into the question of your relationship  
9 with Scott Tucker.

10 MR. SCOTTEN: Your Honor, the witness already  
11 testified about it, but I'm not sure I formally offered it.  
12 Can I offer 4117? I think there was no objection.

13 THE COURT: Any objection?

14 MR. ROTH: No, Judge.

15 THE COURT: Received.

16 (Government Exhibit 4117 received in evidence)

17 BY MR. SCOTTEN:

18 Q. You said you stopped representing Scott Tucker around 2008  
19 or in late 2007, correct?

20 A. That's my best recollection.

21 Q. And you attended a court hearing around that time in the  
22 Cash Advance v. Colorado case?

23 A. I may have.

24 Q. You certainly attended court hearings in Cash Advance v.  
25 Colorado, right?

Ha4Wtuc6

Schulte - Cross

1 A. Certainly, yes.

2 Q. Do you recall this particular hearing where you were  
3 representing Cash Advance? You didn't represent Colorado,  
4 right?

5 A. Uh-huh.

6 Q. You represented Cash Advance, correct?

7 A. I was representing Miami Nation Enterprises doing business  
8 as Cash Advance, yes.

9 Q. And do you remember this hearing where the court wanted to  
10 issue bench warrants for James Fontano, Michael Hicks and Scott  
11 Tucker?

12 A. I do recall that, yes.

13 Q. And do you recall that with respect to Mr. Fontano and  
14 Mr. Hicks, you took no position, because you stated that they  
15 weren't your clients; you were representing Cash Advance?

16 A. I don't recall that statement, no.

17 Q. Do you recall that when the subject of Scott Tucker came  
18 up, you did suggest a bench warrant should not be issued for  
19 him?

20 A. I don't recall that. I'd have to see the transcript.

21 MR. SCOTTEN: Let's show the witness 4131, the front  
22 page.

23 Q. Do you recognize this as the transcript of that proceeding?

24 MR. SCOTTEN: Flip one page so that the witness can  
25 see it.

Ha4Wtuc6

Schulte - Cross

1 Q. And this is an excerpt; it's not the entire proceeding,  
2 correct?

3 A. OK. Can you show the front page again?

4 Q. Absolutely. Let's go back. Actually, let me bring you a  
5 copy.

6 A. OK.

7 MR. ROTH: Could we have a copy as well?

8 MR. SCOTTEN: Yes. Sorry.

9 Q. Before you have a chance to read the whole thing, does this  
10 appear to be the transcript?

11 A. It does, yes.

12 MR. SCOTTEN: Your Honor, the government offers 4131.

13 THE COURT: Any objection?

14 MR. ROTH: No, your Honor.

15 THE COURT: Received.

16 (Government Exhibit 4131 received in evidence)

17 MR. SCOTTEN: Put up the first page for the jury, if  
18 we could. And if we can go to the second page, and if we can  
19 highlight essentially the bottom half, beginning at line 11,  
20 down.

21 Q. And so the court is asking you how your arguments protected  
22 Mr. Tucker or how you even had standing to object to the bench  
23 warrants as to Mr. Tucker, correct?

24 A. Yes.

25 Q. And as you understood that question, standing means why are

Ha4Wtuc6

Schulte - Cross

1 you objecting on behalf of Mr. Tucker if he's not your client,  
2 correct?

3 A. Correct.

4 Q. And if we could just go down, looking at the bottom, you're  
5 asked if you're representing Mr. Tucker, correct?

6 A. That's correct.

7 Q. And your answer is no?

8 A. That's correct.

9 MR. SCOTTEN: If we could go to the next page. Now,  
10 on this page, let's blow up everything from line 2 down to line  
11 13.

12 Q. Here, the court asks you if Mr. Tucker is part of the  
13 tribal entities or connected to them in any way, correct?

14 A. Yes.

15 Q. And then you have a paragraph where you talk about the  
16 legal issues, sort of where you see the case at right now,  
17 correct? In the big paragraph.

18 A. Sure, yes.

19 Q. And in the end, you respectfully decline to tell the court  
20 whether or not Mr. Tucker is part of the tribal entities or is  
21 connected to them in any way, correct?

22 A. Yes, because the tribes --

23 Q. I didn't --

24 A. My client was immune from suit, and sovereign immunity  
25 protects my clients from discovery, and this was, I believe, a

Ha4Wtuc6

Schulte - Cross

1 form of, you know, discovery, by a state court that did not  
2 have jurisdiction over my clients.

3 MR. SCOTTEN: If we could strike the portion that's a  
4 legal answer. I think "yes" would be the relevant part of the  
5 answer.

6 MR. ROTH: I think it calls for an explanation.

7 THE COURT: Yes. I'll let it stand.

8 Go ahead.

9 MR. SCOTTEN: If we could go back to the first page.

10 Q. And if you see right below "transcript of recorded  
11 proceedings," where it says the date, this is March 20 of 2008,  
12 correct?

13 A. Yes.

14 Q. There's nothing about the principle of sovereign immunity  
15 that made you able to object to bench warrants for Scott Tucker  
16 but not James Fontano or Michael Hicks, was there?

17 MR. GINSBERG: Your Honor, I object. I think this is  
18 not relevant now.

19 THE COURT: Overruled.

20 MR. GINSBERG: It's going into a totally different  
21 area now. Could we approach the sidebar?

22 THE COURT: No. Overruled.

23 A. I would need to more, know more about the context of the  
24 discussion with -- about Hicks and the other, Mr. Fontano.

25 Q. We'll see if we can get you the full transcript to review

Ha4Wtuc6

Schulte - Cross

1 overnight.

2 MR. SCOTTEN: Let's go now to Government Exhibit 4132.

3 I apologize. I want 4133.

4 MR. ROTH: Could we have a copy?

5 MR. SCOTTEN: Yes, absolutely.

6 I'll give you a copy too.

7 THE WITNESS: Thank you.

8 Q. If you could take a flip through that.

9 A. OK.

10 Q. And are these billing records that you submitted, formally  
11 at least, to the Miami Nation Enterprises on April 30, 2008?

12 A. This is an invoice for legal services performed by my law  
13 firm for Miami Nation Enterprises.

14 MR. SCOTTEN: Your Honor, the government offers 4133.

15 MR. ROTH: No objection.

16 THE COURT: Received.

17 (Government Exhibit 4133 received in evidence)

18 MR. SCOTTEN: If we could blow up essentially the  
19 letterhead and the date at the top.

20 Q. This invoice is being sent on April --

21 MR. SCOTTEN: We missed it by a hair.

22 Q. -- April 30, 2008, is that correct?

23 A. Yes.

24 Q. And that's your firm at the top, correct?

25 A. It is.

Ha4Wtuc6

Schulte - Cross

1 Q. And it bills, at least an address, the Miami Nation  
2 Enterprises, correct?

3 A. Yes.

4 MR. SCOTTEN: Can we go to page 2, and can we  
5 highlight the entry for April 4, 2008.

6 Q. And sir, here, you are billing Miami Nation Enterprises for  
7 travel to Kansas City for a meeting with CLK and its attorneys  
8 regarding Colorado litigation matters, and then your return  
9 travel, correct?

10 A. Correct.

11 Q. And you're CJS, correct?

12 A. I am.

13 Q. Who is LGM?

14 A. That is my partner, Lance Morgan.

15 Q. And Lance Morgan spells it out in a little more detail  
16 where he says the meeting is with you and Muir and Tucker,  
17 correct?

18 A. Yes.

19 THE COURT: Would those two entries relate to the same  
20 meeting, one for you and one for Mr. Morgan?

21 THE WITNESS: Yes, your Honor.

22 THE COURT: Thank you.

23 BY MR. SCOTTEN:

24 Q. And to be clear, this is two weeks after this hearing,  
25 correct?

Ha4Wtuc6

Schulte - Cross

1 A. Approximately, yes.

2 MR. SCOTTEN: Actually, let's go to page 3.

3 Well, let's go back to the previous screen. And can  
4 we blow up that same entry.

5 Q. So you're conducting a strategic planning meeting here,  
6 correct?

7 A. I'm sorry?

8 Q. At least according to Mr. Morgan, you're conducting a  
9 strategic planning meeting here, correct?

10 THE COURT: "At least according to Mr. Morgan."

11 A. That is how Mr. Morgan described it.

12 MR. SCOTTEN: Yes, your Honor. I'm sorry.

13 A. Yes.

14 Q. And Mr. Muir is present; he's an attorney?

15 A. Correct.

16 Q. And Mr. Tucker is also present, correct?

17 A. Correct.

18 Q. And he is not an attorney, correct?

19 A. Correct.

20 Q. There are no tribal members present, are there?

21 A. That's not uncommon to meet with opposing counsel --

22 Q. Please answer the question, sir.

23 A. -- without a client present.

24 No, they're not present.

25 Q. OK.

Ha4Wtuc6

Schulte - Cross

1 MR. SCOTTEN: We can take that one down.

2 Q. Now, this is supposedly right after you stopped working for  
3 Mr. Tucker, correct?

4 A. That's the best of my recollection, yes.

5 Q. Well, you had told the court two weeks prior that you were  
6 not representing Scott Tucker, correct?

7 A. Correct. I did not represent him in that case, correct.

8 Q. But you had billed Mr. Tucker's company -- well, how long  
9 did you keep billing Mr. Tucker's company for your legal  
10 services?

11 A. I believe that would have ended about the same time, late  
12 2007, early 2008. It would have been prior to this, I believe,  
13 because this was -- well, I'm not sure, but I would say late  
14 2007, early 2008.

15 Q. OK. Now, your firm, you said, I think earlier today, it  
16 was 40 attorneys or so?

17 A. Currently.

18 Q. How big do you think it was at that time, 2007, 2008?

19 A. I'm not sure. It, it was likely smaller at that time.  
20 Maybe 20, 25, 30.

21 Q. So that's not a tiny firm, but that's a smallish firm,  
22 correct?

23 A. Sure.

24 Q. And you were a partner at that firm?

25 A. Correct.

Ha4Wtuc6

Schulte - Cross

1 Q. And you were concerned with billing, correct; all partners  
2 are?

3 A. It's part of my -- part of my job, yes.

4 Q. And you knew that a lot of money was coming in from Scott  
5 Tucker, correct?

6 A. There was a lot of work being done with regard to Mr. --  
7 yeah, are you talking about -- can you clarify the time frame?  
8 Because I want to make sure I'm accurately representing this.

9 Q. Sure. Let's say a lot of money came into your firm from  
10 Mr. Tucker between 2005 and 2013, correct?

11 A. Yes, we performed -- well, at least to 2008, a lot of work  
12 for Mr. Tucker's entity, UMS, up until early 2008. Correct.

13 Q. You were aware that even after 2008 Scott Tucker was paying  
14 the bills, correct?

15 A. No. The tribal entities were paying the bills, as I  
16 recall.

17 Q. Would it surprise you to learn that between 2008 and 2013,  
18 your firm took in \$16 million from the various businesses that  
19 are the subject of this case?

20 A. Between 2008 and 2016?

21 Q. '13.

22 A. '13? It's possible. I've never done the calculations.

23 Q. And as the senior partner -- I think you were the senior  
24 partner on this matter, correct?

25 A. Yes.

Ha4Wtuc6

Schulte - Cross

1 Q. That's enough money that you'd pay attention to it,  
2 correct?

3 A. It is a substantial amount of money, correct.

4 Q. And is it your testimony that Mr. Tucker was not paying  
5 those bills?

6 A. The tribal entities were paying those bills as operating  
7 expenses of the, the lending company.

8 MR. SCOTTEN: Can we show the witness Government  
9 Exhibit 4114.

10 Q. You can just flip through it.

11 A. Sure.

12 OK.

13 Q. Are these a series of checks written to your law firm?

14 A. This is a -- copies of a series of checks written to my law  
15 firm, correct.

16 Q. And it looks like they've been cashed; you can see the  
17 "deposit only" stamp?

18 A. Yes.

19 MR. SCOTTEN: Your Honor, the government offers 4114.

20 MR. ROTH: No objection.

21 THE COURT: Received.

22 (Government Exhibit 4114 received in evidence)

23 MR. SCOTTEN: And if we can show the first page.

24 Q. Mr. Schulte, this is a check from TFS Corp. to Fredericks  
25 Peebles & Morgan for \$40,000, correct?

Ha4Wtuc6

Schulte - Cross

1 A. That is correct.

2 Q. And TFS Corp. was one of the ones supposedly associated  
3 with the Miami?

4 A. TFS was a Miami, the name of a Miami tribal entity that the  
5 tribe used -- it was -- interchangeably with MNE Services.

6 Q. And on the right there, there's a signature, correct?

7 A. Correct.

8 Q. And that's the same signature -- well, it appears similar  
9 to, and I know you're not a handwriting expert, but it appears  
10 similar to the signature you recognized earlier when the  
11 defendants showed you their exhibit, 406, correct?

12 A. Yes.

13 Q. And that was Scott Tucker's signature on 406, correct?

14 A. It was -- yes, I believe it was.

15 Q. It was on a fax from him to you?

16 A. Sure, yeah.

17 Q. You recognized that from him, correct?

18 A. Yes.

19 MR. SCOTTEN: Let's go to the next page.

20 Q. This is a check for about a hundred thousand dollars to  
21 your firm, correct?

22 A. Correct.

23 Q. And this one's in the name of the Santee Sioux, correct?

24 A. That is correct.

25 Q. Same signature, though, correct, as best you can tell?

Ha4Wtuc6

Schulte - Cross

1 A. It appears to be, yes.

2 MR. SCOTTEN: Let's go to the next page.

3 Q. And here we have Red Cedar Services, correct?

4 A. Correct.

5 Q. And this is a check from Red Cedar Services to your firm  
6 for about, almost \$34,000, correct?

7 A. Correct.

8 Q. And that is an entity that is supposedly affiliated with  
9 the Modoc, correct?

10 A. That is owned -- entity owned by the Modoc tribe, yes.

11 Q. And similar signature here, correct?

12 A. Yes.

13 Q. And that's the signature you've identified as appearing to  
14 be Scott Tucker's, correct?

15 A. Correct.

16 MR. SCOTTEN: And let's go to the next page.

17 Q. TFS Corp. again?

18 MR. SCOTTEN: Next page.

19 Q. This is AMG Services, correct?

20 A. Correct.

21 Q. And -- oh, I should note all these checks so far, and you  
22 can flip back, these are all in 2011, correct?

23 A. Yes.

24 Q. And if we could go back to the fifth page, this is AMG  
25 Services, correct?

Ha4Wtuc6

Schulte - Cross

1 A. Yes.

2 Q. 2011, and they're making out a \$17,000 check to your firm.  
3 And AMG Services is a sort of umbrella entity at this time  
4 supposedly owned by the Miami, correct?

5 A. Yes, it is a Miami -- it is owned by the Miami Tribe of  
6 Oklahoma.

7 Q. And again, same signature, best you can tell?

8 A. Yes.

9 Q. Scott Tucker's signature?

10 A. It appears to be, yes.

11 Q. And we don't have to go through all of these, but you can  
12 flip through them, and we'll just flip down to the last page.  
13 You can take a look at each one, because I'm going to ask you  
14 to sort of summarize.

15 A. I'm sorry?

16 Q. You can take a look at each check. I'm going to ask you to  
17 summarize it.

18 A. OK. Yeah, I have -- when you originally handed me the  
19 exhibit, I did leaf through all the pages.

20 Q. OK. So fair to say it contains about 22 checks? I don't  
21 know if you counted them.

22 A. I didn't count them, but I'll take your word for it.

23 Q. Well, bunch of checks in here, correct?

24 A. They're copies of checks written to my firm, what appears  
25 to be between 2008 and 2011.

Ha4Wtuc6

Schulte - Cross

1 Q. From a variety of entities all supposedly associated with  
2 different tribes, correct?

3 A. Yes. All from tribally owned entities, correct.

4 Q. And all appearing to be signed by Scott Tucker, correct?

5 A. Correct.

6 Q. And so you knew that Scott Tucker was signing your checks,  
7 right?

8 A. Yes. CLK Management and subsequently AMG Services, as part  
9 of their servicing of the loans, would pay all of the  
10 operational costs of the servicing company, and the -- our fees  
11 were operational costs of the lender, lenders owned by the  
12 tribes. So it was an administrative function for CLK  
13 Management to cut those checks to our firm.

14 Q. Well, except there's no CLK during this time period,  
15 correct?

16 A. Well, it would have been AMG at that point in time, and at  
17 that point in time, Mr. Tucker was employed by AMG.

18 Q. So Mr. Tucker, as an employee of AMG, signed your checks  
19 from AMG and every other business involved in this, correct?

20 A. Yes, he had authority to do so.

21 Q. Well, You certainly believed him to have authority to do  
22 so?

23 A. I believed he did, yes.

24 Q. And by the way, Mr. Muir was the one who sort of approved  
25 all your billing on a day-to-day basis, correct?

Ha4Wtuc6

Schulte - Cross

1 A. No, he wouldn't approve it. He would receive copies of the  
2 invoices.

3 Q. It wouldn't surprise you to learn that he was the one who  
4 took it to accounting and made sure you got paid though, would  
5 it?

6 A. That could very well be, yes.

7 Q. So as a practical matter, you knew that Scott Tucker was  
8 signing your checks and Mr. Muir was getting your checks cut  
9 during this entire time period, correct?

10 A. Well, I generally don't see checks, actual copies of checks  
11 from clients when they come into the firm; I'll just get a  
12 report of -- from my billing secretary, who -- that invoices  
13 were paid. I don't normally see copies of checks.

14 Q. Right, but you're a partner at a smallish firm that's made  
15 in the ballpark of \$16 million in five years off this client,  
16 correct?

17 A. I don't know that independently, but --

18 Q. Well, you've seen a bunch of checks?

19 A. Sure.

20 Q. Made a lot of money, correct?

21 A. Sure.

22 Q. Actually, I misspoke when I said client; it's actually a  
23 whole series of different named entities, correct?

24 A. There would have been -- yeah, all tribally owned entities  
25 and clients of my firm, yes.

Ha4Wtuc6

Schulte - Cross

1 Q. And I want to make sure, Is your testimony that you didn't  
2 see the checks or you didn't know that Scott Tucker and Tim  
3 Muir were the ones who were controlling the billing?

4 A. I disagree with the statement that they controlled the  
5 billing. They would have been responsible probably for the  
6 administrative function of making sure that the operational  
7 costs of the portfolios -- that is, Mr. Tucker would -- were  
8 paid, and our legal fees were part of those operating expenses.

9 Q. As a partner in a law firm, you're concerned with the money  
10 coming in, correct?

11 A. Well, yes. The firm needs, needs to have bills paid in  
12 order to continue operations. Certainly.

13 Q. You know who controls the payment of bills, correct?

14 A. I knew that -- it didn't surprise me that Mr. Tucker would  
15 be signing the checks, because he --

16 THE COURT: Did you understand the question?

17 THE WITNESS: Can you repeat the question?

18 BY MR. SCOTTEN:

19 Q. At as a partner in a law firm, you knew who was controlling  
20 your payments, correct?

21 A. I did.

22 Q. And you knew, because I think you just testified, that  
23 Mr. Muir was the one going to Mr. Tucker to get these checks  
24 sent to you, correct?

25 A. He, he would likely have transmitted them to Mr. Tucker,

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Schulte - Cross

1 correct.

2 Q. And you knew that the money would not come to you unless  
3 Scott Tucker signed the checks, correct?

4 A. It would have been him or anyone else authorized to sign on  
5 those accounts.

6 Q. OK. And we've seen 22 checks for hundreds of thousands,  
7 millions of dollars, maybe, from Scott Tucker, correct?

8 A. These checks all appear to be signed by Mr. Tucker,  
9 correct.

10 Q. Now, you remained in close coordination with Scott Tucker  
11 and Timothy Muir throughout this, correct?

12 A. Yes. Mr. Tucker had -- his interests were aligned with the  
13 tribal lenders', correct.

14 Q. OK. So you -- and he was the one cutting your checks,  
15 correct?

16 A. He performed the function of, of signing the checks as an  
17 operating expense of the loan portfolios, correct.

18 Q. You also took direction from him in the conduct of the  
19 litigation, correct? And I'm talking post-2008, to be clear.

20 A. No, I did not take direction from Mr. Tucker in the conduct  
21 of the litigation.

22 MR. SCOTTEN: Let's take a look at Government Exhibit  
23 3146, if we could show it on the screen.

24 Q. I think it's pretty short, but if you want a hard copy, let  
25 me know.

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Schulte - Cross

1 A. OK.

2 Q. And is this an email chain between you, Scott Tucker and  
3 Timothy Muir?

4 A. It is.

5 MR. SCOTTEN: Your Honor, the government offers 4136.

6 THE COURT: Any objection?

7 MR. BATH: No objection.

8 THE COURT: All right. Received.

9 (Government Exhibit 4136 received in evidence)

10 MR. SCOTTEN: Could we go to the bottom of the page  
11 and publish it.

12 Sorry. Is there a second page?

13 And up one from that, I think there's a middle page.

14 Great. Let's highlight the original message.

15 Q. Here, we have an email from you seeing if you want to  
16 discuss a subpoena served at U.S. Bank, correct?

17 A. Correct.

18 Q. And if we can go up, that's an email from Tim Muir,  
19 correct?

20 A. That is correct.

21 Q. That's an email relative to Ameriloan, correct?

22 A. Correct.

23 Q. And then let's go up to your next email, top of the page.

24 You're informing Tim Muir and Scott Tucker, essentially, that  
25 you are going to move to quash, meaning essentially not have to

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Schulte - Cross

1 comply with the subpoena, correct?

2 A. Yes.

3 MR. SCOTTEN: Let's go to the next page. We don't  
4 need to do that email. Let's do the one above it.

5 Q. So then Scott Tucker writes back, and he says, "At first  
6 blush, it seems we need to have a very well written  
7 brief/letter from the tribe's attorneys," correct?

8 A. That's what it says.

9 Q. Do you have an understanding who the, and I'm just reading  
10 literally -- the tribal's attorneys are?

11 A. That would have been my firm.

12 Q. And there it says, "supporting the quash of any subpoena on  
13 any tribal bank account, across the board, that needs to be  
14 setting," it says, but should be sitting "at U.S. Bank,"  
15 correct?

16 A. That's what it says, yes.

17 Q. "And followed up immediately when we get notice of one  
18 being served." Is that what it says?

19 A. Correct.

20 Q. So Scott Tucker is directing, or suggesting, perhaps, to  
21 your firm that the subpoena be drafted by you and that it be  
22 sitting at a bank waiting there in case another subpoena was  
23 served.

24 A. He is suggesting that. He's not directing.

25 MR. SCOTTEN: OK. Let's go up to the next email.

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Schulte - Cross

1 Q. This is just informing Scott Tucker that you and Tim Muir  
2 had talked?

3 A. Yes.

4 Q. And I won't go into it, but the next email, in brief, is  
5 you sort of explaining the game plan to them?

6 A. It appears that way, yes.

7 Q. So you received this subpoena naming Ameriloan, correct?

8 A. I don't know that I personally received it, but one of our  
9 clients received it.

10 Q. Well, you got it; it came to your attention?

11 A. OK. Fair enough.

12 Q. And so you reached out to Tim Muir and Scott Tucker to find  
13 out what to do, correct?

14 A. No. I notified them of -- that we received a subpoena,  
15 yes.

16 Q. You said, Let's discuss what to do, correct?

17 A. I said, Let's discuss, yes.

18 Q. And then Scott Tucker made a suggestion as to what to do?

19 A. He made a suggestion, it appears, yes.

20 Q. The guy who was cutting your checks, correct?

21 A. The guy who was authorized --

22 MR. ROTH: Objection, your Honor.

23 A. -- by the tribes to -- that's correct.

24 THE COURT: I'll allow it.

25 Go ahead.

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Schulte - Cross

1 Q. But your testimony is to this jury that --

2 THE COURT: You didn't know whether he was  
3 quote/unquote cutting the checks, but you knew he was signing  
4 the checks?

5 THE WITNESS: That is correct.

6 MR. SCOTTEN: Thank you, your Honor.

7 THE COURT: OK. Go ahead. Next question.

8 BY MR. SCOTTEN:

9 Q. And your testimony here is that Scott Tucker was not in any  
10 way directing you?

11 A. No, I did not take direction from Scott Tucker on any  
12 litigation.

13 MR. SCOTTEN: Let's go to Government Exhibit 4135.

14 Q. Well, let me ask you this, before I show you the exhibit.

15 You remained close enough with Scott Tucker and Timothy  
16 Muir during this period; you were very close with them during  
17 this period, correct?

18 A. Our clients had mutual interests, and so we -- I worked  
19 closely with Tim.

20 THE COURT: Do you understand the question?

21 MR. SCOTTEN: It may be too general.

22 Q. You maintained a very close relationship with Muir and  
23 Tucker, correct?

24 A. I don't know what you mean by a very close relationship.  
25 We had a professional relationship because our clients had

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Schulte - Cross

1 mutual interests.

2 Q. And that relationship was close enough that you would --  
3 well, you viewed yourself as adversaries together of the  
4 states, correct?

5 A. Yes. Our interests were aligned in the -- that litigation,  
6 correct.

7 Q. And you were close enough to Muir and Tucker that you would  
8 send them emails using very derogatory terms about the states,  
9 correct?

10 A. I'd have to see the email.

11 Q. I'm going to show just you and counsel 4135.

12 A. I've seen it. Yes.

13 Q. OK. So it's fair to say that you shared very derogatory  
14 insults about the state regulators with them, correct?

15 A. This email appears to be sharing a -- calling names to  
16 opposing counsel from the states, correct.

17 Q. And I'm not going to offer it, but I mean, it's very harsh,  
18 correct?

19 A. It was unflattering and -- yes, correct.

20 Q. You didn't share emails like that with, say, Don Brady or  
21 Lee Ickes, did you?

22 A. This particular email, no.

23 Q. Emails like this; you didn't reach out to Lee Ickes to  
24 suggest terrible things about the state regulators, did you?

25 A. I may have.

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Schulte - Cross

1 Q. Of the same -- let me ask you about Troy Little Axe,  
2 specifically, since he testified here. Did you share things  
3 like this with Mr. Little Axe?

4 A. When you say things like this --

5 MR. SCOTTEN: Your Honor, the government offers 4135.

6 MR. ROTH: Objection.

7 MR. SCOTTEN: We should show it to the judge.

8 MR. GINSBERG: I have an objection, your Honor, and I  
9 would like to approach.

10 THE COURT: No. I'm going to sustain the objection  
11 under 403.

12 MR. GINSBERG: Thank you.

13 BY MR. SCOTTEN:

14 Q. Without getting into exactly what's in there, my question  
15 is, you didn't issue these sort of insults, you didn't trade  
16 these around with your tribal clients; you were closer with the  
17 men at this table, correct?

18 A. Because -- well, I'm not sure. I would maybe have had  
19 discussions with my clients and Mr. Little Axe that may have  
20 been -- you know, we would often discuss the litigation and --  
21 but this one I did not, it appears.

22 Q. I want to ask you about Mr. Tucker's first encounter, and  
23 I'm backing up in time a little bit here to when you first came  
24 on. You understood you were replacing an attorney named --  
25 well, withdrawn.

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Schulte - Cross

1           There was an attorney named Clifford Cohen in the case on  
2 this matter before you, correct?

3 A. Not on a case. I did know Mr. Cohen was an attorney who  
4 represented Mr. Tucker when I first was introduced to  
5 Mr. Tucker.

6 Q. And he at some point left, correct?

7 A. I don't know what happened to him. My communications with  
8 Mr. Cohen were fairly brief in duration.

9 Q. Is it fair to say that he did not take as aggressive a view  
10 of the law as you?

11 A. I would not know, because I did not really have any  
12 extended conversations with Mr. Cohen.

13 Q. Is it fair to say that you yourself had a very aggressive  
14 view of the law?

15 A. I aggressively represent my clients.

16 Q. In terms of your legal representation, is it fair to say  
17 you take positions that may not be in accordance with current  
18 law but seek a change in the law?

19 A. We do our best to advise our clients within the bounds of  
20 the law as it exists.

21 Q. Well, have you not bragged to Mr. Tucker and Mr. Muir about  
22 your aggressiveness?

23 A. I may -- I may have.

24           MR. SCOTTEN: Your Honor, the government offers --

25 Q. Let me show you 4104. It's a single page.

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Schulte - Cross

1           Is this another email between you and Mr. Tucker and  
2           Mr. Muir, and with Mr. Morgan copied?

3           A.   It is.

4           MR. SCOTTEN: Your Honor, the government offers 4104.

5           MR. ROTH: I'm trying to read it on the screen.

6           MR. GINSBERG: Objection, your Honor.

7           THE COURT: Basis.

8           MR. GINSBERG: I think it would be inappropriate for  
9           me to state it in front of the jury. I mean, with all due  
10          respect, it's 5:00, and I think this is going to go on for a  
11          while.

12          THE COURT: All right. I'll take that suggestion.

13          Ladies and gentlemen, please do not discuss the case  
14          among yourselves or with anyone. We'll be back in action  
15          tomorrow at 10:00 --

16          JUROR: We'll be riding, yes.

17          THE COURT: What? What did you say?

18          Oh, OK. See you tomorrow morning. Let's hope the  
19          good weather remains, and everybody stay healthy and happy.

20          And you don't have a game until Thursday night, right?

21          JUROR: Tomorrow.

22          THE COURT: Tomorrow, so that's Thursday. It's a  
23          nighttime game? Nighttime game, right?

24          JUROR: I honestly don't know.

25          THE COURT: All right.

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Schulte - Cross

1 (Jury not present)

2 THE COURT: And you may step down.

3 MR. SCOTTEN: Your Honor, I think this is routine. I  
4 assume the witness may not speak with counsel while on  
5 cross-examination.

6 THE COURT: Yes. There is a sequester.

7 Mr. Schulte, while you're on cross-examination, you  
8 may not discuss the case or your testimony with counsel for  
9 Mr. Tucker or Mr. Muir. Do you understand that?

10 THE WITNESS: I understand, your Honor.

11 THE COURT: And counsel are under the same direction.  
12 Thank you.

13 THE WITNESS: Thank you.

14 (Witness not present)

15 (Continued on next page)

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1 THE COURT: So let me hear, Mr. Ginsberg.

2 MR. GINSBERG: I am taking a minute so I articulate  
3 this properly.

4 To begin with, I didn't at least begin objecting to  
5 this series of exhibits because although they were in  
6 relativity discovery, the government chose not to put it on the  
7 government exhibit list, nor did they choose to give it to us  
8 until they were showing it to the witness. So until the  
9 questions were being put to the witness and we saw the  
10 document, I didn't begin to recognize the direction they were  
11 going in.

12 It seems to me that they are attempting to do a few  
13 things and some of which cross the line, in my view at least.  
14 Your Honor sustained an objection on 403 grounds, but I think  
15 that was like a one-off because of the nature of the language.  
16 It appears to me that what they are doing is attacking this  
17 witness's credibility by showing bias and things of that  
18 nature. However, the way that they are going about doing it is  
19 by introducing things that I thought were not permitted to be  
20 the subject of this case; and that is, they are now attacking  
21 him, for example, the last series of documents and questions,  
22 about his aggressiveness, the difference of his attitude about  
23 dealing with the law versus Cliff Cohen, about him being a more  
24 aggressive lawyer, about Scott Tucker wanting to have a more  
25 aggressive lawyer, that whole line of questioning with all

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1 those documents.

2           There is an explanation for why he is a more  
3 aggressive lawyer, and how he practices law in a more  
4 aggressive way, and that's something which there were documents  
5 earlier, which I am not sure if your Honor specifically ruled  
6 on them or we didn't try to get them in completely because it  
7 begins to talk about the aggressive nature of the practice of  
8 this firm, and other individuals' aggressive position -- that  
9 is, some of the tribal members -- vis-a-vis the government.  
10 And the government here is now attacking this witness because  
11 he has an aggressiveness, which arises from his hostility  
12 towards the government, and it spills over into the way he  
13 practices law.

14           In order to defend against that and to show that it is  
15 not an improper, illegal way of practicing law, but it's  
16 aggressive because in order to defend Native American tribes  
17 and let them have businesses and make money and have  
18 opportunities, a lawyer has to push regulatory agencies and the  
19 government very hard because of the history that goes along  
20 with it, and I don't think I need to go into all of that, I  
21 think it's sort of a given. And the government has opened that  
22 door now, along with other things they have opened the door to,  
23 with the checks being signed by Mr. Tucker, who had the  
24 authority to sign the checks, who was an employee of AMG.

25           I know what they are trying to show, I understand

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1 that, but by doing it the way they are doing it, they have now  
2 opened, in my view, all kinds of doors that were previously  
3 closed, particularly the last piece. I want to think overnight  
4 about some of the other things, but this last piece I think  
5 gives us the opportunity now to have this witness, on redirect  
6 examination, testify about what he means when he talks about  
7 aggressive, why he was aggressive, how he was aggressive. All  
8 of those things I think are now fair game, because if you're  
9 going to undermine him and attack him and try to make him look  
10 like he is acting improperly as a lawyer, or unethically as a  
11 lawyer, because he has this bias, but there is a legitimate  
12 reason that is not something that's illegal, we should now be  
13 able to do it.

14 Just the small separate little piece, maybe there is  
15 no obligation to have put on the list that we get every day or  
16 given us this morning these series of documents. Maybe they  
17 could have handed it to us before cross. They decided not to.  
18 OK. We are doing it on the fly. We are looking at the  
19 documents. As your Honor knows, there were millions of  
20 documents. We may have seen them before, and we are dealing  
21 with them as we see them now. So I am adding into the  
22 equation, not to complain, but just to explain to your Honor  
23 why my objection came a little late, and I am now piecing this  
24 together for the Court.

25 So I think this shouldn't be allowed. I think it

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1 crossed over lines that were sort of set by the Court. But if  
2 the government has now chosen to do this, I believe the door is  
3 open for us to go back on redirect and have this all explained  
4 by the witness.

5 THE COURT: Well, I am always happy to hear from you,  
6 Mr. Ginsberg. I thought I was going to hear the basis for the  
7 objection to Government Exhibit 4104.

8 MR. GINSBERG: I think what it's doing is it's taking  
9 this aggressiveness issue and it's making it into a 403 issue.  
10 It's beginning to go way past some relationship with Mr.  
11 Tucker. I know they want to undermine it, but they are doing  
12 it document after document after document. But now getting  
13 into his aggressiveness and his mode and method of practicing  
14 and so forth I think goes past where it goes. So I object to  
15 this document for that reason. And I am sorry I sort of did it  
16 in reverse order, but that's what I have to say.

17 THE COURT: As to this document, I sustained the  
18 objection because I do believe the probative value of this  
19 document is substantially outweighed by the danger of jury  
20 confusion. My ruling is limited to this document.

21 Now, Mr. Roth, you had something you wanted to raise  
22 with me?

23 MR. ROTH: Yes, your Honor. In part, it segues into  
24 what Mr. Ginsberg just said. It's in respect to the proposed  
25 testimony of Lance Morgan. We wanted to be sure, your Honor,

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1 of the scope of the testimony that you would permit him to  
2 offer at this point.

3 Mr. Morgan is a partner of Mr. Schulte's firm. He  
4 specializes in particularly Native American development,  
5 economic development; he has his own company which does that,  
6 employs a thousand people. We would be offering his testimony  
7 specifically in regard to the CLK/AMG merger and the fact that  
8 that merger idea came from the Native Americans, the tribes,  
9 not from Mr. Tucker, as was testified to by one of the  
10 government witnesses in this case, to rebut that.

11 THE COURT: Why wouldn't that be hearsay?

12 MR. ROTH: It's Morgan himself, Judge. He is the one  
13 who conceived the plan, communicated it to Mr. Tucker. It  
14 affects Mr. Tucker's state of mind. He can talk about it  
15 himself. It's his plan.

16 THE COURT: I understand. Let me hear from the  
17 government.

18 MR. SCOTTEN: Your Honor, my understanding is this is  
19 going to be an attorney, Mr. Morgan, suggesting advice he gave  
20 to Mr. Tucker mid-conduct. As we have said, we have no  
21 objection to Mr. Morgan's factual testimony. I am not sure an  
22 allegation has been made as to who carried the plan from who to  
23 who, but assuming it's somehow relevant, if Mr. Morgan wants to  
24 say, I took the plan and carried it down to Miami, or Miami  
25 gave me the plan and I carried it to Tucker, we have no

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1 objection. I do think what is being proffered is Mr. Morgan is  
2 going to explain, I came up with this idea, I counseled Tucker  
3 on it, I explained to him why it would be a good idea, based on  
4 my expertise as a tribal lawyer.

5 THE COURT: I don't feel I need to apologize for the  
6 following question that I am going to ask, which is whose  
7 lawyer does Mr. Morgan think he was when he was having this  
8 conversation with Mr. Tucker? I think it's a very fair  
9 question to ask, based on the testimony I have been hearing in  
10 this case.

11 So, Mr. Roth, I put that question to you.

12 MR. ROTH: Judge, he would testify that he was not Mr.  
13 Tucker's lawyer, he was the tribe's lawyer at that point.

14 THE COURT: I note the consultation on the record.

15 There is nothing inappropriate with the consultation,  
16 but it seems to me that --

17 MR. ROTH: He gave the advice directly to Mr. Tucker  
18 and Mr. Muir.

19 THE COURT: He is advising them or he is not advising  
20 them?

21 MR. ROTH: He gave the advice to them.

22 THE COURT: So he is acting as their lawyer?

23 MR. ROTH: Yes.

24 THE COURT: So now you're changing the position you  
25 just gave me a second ago. Is that right?

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1 MR. ROTH: Yes.

2 MR. SCOTTEN: For what it's worth, your Honor --

3 THE COURT: This is not a criticism of you, Mr. Roth.  
4 Lawyers are advocates for parties, and we as lawyers, or you as  
5 lawyers, only know what you're told. But I find it astounding.

6 MR. SCOTTEN: Your Honor, we don't dispute that. That  
7 is our understanding, that Mr. Morgan was, in some sense,  
8 acting as Tucker's counsel. The issue is the timing issue the  
9 Court has ruled on. This is 2006. In fact, if the evidence  
10 came in, it's expressly formed in a litigation defense mode.  
11 Colorado is suing us, here is some things we can do to fight  
12 them off. That's not an advice of counsel defense.

13 THE COURT: How do you get around that?

14 MR. ROTH: We are not offering it for advice of  
15 counsel.

16 THE COURT: So this is not advice of counsel. This is  
17 what then?

18 MR. ROTH: It's directly to contradict the  
19 government's theory that these corporations were formed as part  
20 of this sham, that this is part of the fraud that they are  
21 asserting. And their witness said specifically this was  
22 suggesting that this came from Mr. Tucker as a principal actor  
23 in promoting this sham operation.

24 THE COURT: I took the gist of what you said at the  
25 outset that this came up from Mr. Morgan as an idea to benefit

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1 the tribe.

2 MR. ROTH: Judge, as everything else and the testimony  
3 you just heard, it's mutually beneficial. That's part of the  
4 evidence that we want to go through, elicit through Mr. Morgan,  
5 who knows about the benefits to the tribe, in this  
6 relationship.

7 The government has been portraying that the tribe is  
8 being abused by Mr. Tucker by this 99 to 1.

9 THE COURT: Mr. Morgan in this conversation has a duty  
10 of loyalty, a fiduciary duty to act in the best interests of  
11 his client. And now I hear his client is not the tribe, his  
12 client is Mr. Tucker. And if Mr. Tucker is his client, why is  
13 he advising this?

14 MR. ROTH: Judge, we were discussing whether or not  
15 there was a joint defense agreement in place at that particular  
16 time in 2006 between counsel.

17 THE COURT: OK. And?

18 MR. ROTH: I would have to confirm with Mr. Morgan.

19 THE COURT: Listen, I want to be very clear, honestly.  
20 I am not into abusing people's schedules. The first I ever  
21 heard that Mr. Morgan has been here for five days was, I think,  
22 coming back from the last break. I have done nothing at all to  
23 trample on somebody's schedule. That's not my idea of a good  
24 time, and I don't do that. But based on this discussion, I  
25 haven't a clue on how I am going to rule. I really don't.

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1 Again, this is not directed to you as a lawyer, Mr. Roth, but  
2 how this has unfolded is a bit breathtaking to me, but that's  
3 all right.

4 So I will see you tomorrow at 10:00.

5 MR. SCOTTEN: Thank you, your Honor.

6 MR. GINSBERG: Do you intend to have a charge  
7 conference if we finish testimony tomorrow?

8 THE COURT: Well, yes, if we do, we will. If you are  
9 resting -- if Defendant Tucker is resting tomorrow.

10 MR. GINSBERG: Conceivably, we might rest tomorrow.

11 THE COURT: That's the question I asked. If Defendant  
12 Tucker is resting tomorrow, and the only thing open is the  
13 testimony of Mr. Muir, yes, we can take up the charge tomorrow,  
14 and we will work off of Court Exhibit 13. All right.

15 Thanks very much. Have a great evening.

16 (Adjourned to October 5, 2017, at 10:00 a.m.)  
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24  
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